MANUAL OF GUIDANCE

FREEDOM OF INFORMATION

Version 5

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This manual is fully disclosable under FOI

If you have a technical FOIA enquiry please check this manual **before** contacting the CRU

DISABILITY DISCRIMINATION ACT (DDA) STATEMENT
This manual has been produced specifically for FOI practitioners.

Additional copies are available, if required, in larger print from the ACPO Central Referral Unit.

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LIST OF ABBREVIATIONS

ACPO	Association of Chief Police Officers
ACPOS	Association of Chief Police Officers of Scotland
BAU	Business as Usual
CHIS	Confidential Human Intelligence Source
CPIA	Criminal Procedures and Investigation Act
CPS	Crown Prosecution Service
CRU	Central Referral Unit
DDA	Disability Discrimination Act
DP	Data Protection
DPA	Data Protection Act
EIR	Environmental Information Regulations
FOI	Freedom of Information
FOIA	Freedom of Information Act
GCHQ	Government Communications Headquarters
GPMS	Government Protective Marking Scheme
HMIC	Her Majesty's Inspector of Constabularies
IC	Information Commissioner
ICO	Information Commissioner's Office
IPCC	Independent Police Complaints Commission
IT	Information Tribunal
MOG	Manual of Guidance
MOJ	Ministry of Justice
NCND	Neither Confirm Nor Deny
NSAP	National Security Appeals Panel
PIT	Public Interest Test
SAR	Subject Access Request
SOCA	Serious Organised Crime Agency
SRP	Safer Roads Partnership

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FOREWORD

By DCC Ian Readhead

The impact of FOI on the Police Service since its introduction in 2005 has been quite dramatic. The Service is dealing with an ever increasing number of requests; currently over 24,000 a year. The continuing rise in demand is possibly fuelled by the recent success of FOI campaigners in obtaining information which was previously unavailable, such as MPs' expenses. Without doubt, this sends a message to the Police Service that we will be scrutinised at all levels as the public demand for access to our information grows. In addition to some potentially embarrassing information disclosures, it's quite clear that non-compliance with the legislation itself will certainly attract adverse public reaction and full media attention.

Clear evidence is now emerging of the pressure being felt by all forces in trying to respond to applicants on time whilst maintaining high standards of customer service. The ICO, media and FOI campaign groups still recognise the Police Service as being at the forefront of FOI, which is without doubt due to the continued hard work of FOI practitioners in the forces. The challenge is for us to maintain that position by ensuring that the FOI role is fully recognised by my ACPO colleagues. This must be supplemented by adequate training, resources and support. The CRU will continue in its efforts to assist in the strategic co-ordination of these areas within the Police Service.

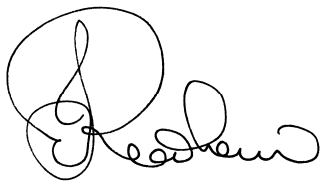
The rapid development of FOI has also seen us being challenged in important areas such as low level crime statistics, informant costs and locations of registered sex offenders, where we have witnessed lower thresholds in the provision of data. In addition, we are also being seriously undermined by the Audit Commission Act which allows for the provision of information that would not normally be considered suitable for release under FOI. This anomaly must be recognised and addressed at government level.

This version of the manual contains ACPO guidance on the revised ICO Publication Scheme. Section 19 of the Act makes the scheme enforceable and forces will be required to meet the minimum standards as outlined within the definitions document. The implementation of the scheme on forces' websites must be completed by 1st January 2009 and will be subject to an ICO inspection process.

Under the terms of the new scheme, the Police Service is committed to :

- Proactively publishing information or making it available as a matter of routine
- Specifying what information is available
- Publishing the methods through which information is accessible
- Keeping information up to date
- Producing a schedule of fees where applicable

On a final note, we must maintain our corporate approach in responding to questions which relate to sensitive business areas. Some forces are still not waiting for CRU advice before replying to applicants, or are deciding to go against the national advice. The impact of such actions on other forces must be fully recognised. Before any CRU advice is sent out, full consultation is undertaken with the ACPO business leads and other interested parties, and whilst this at times can delay the FOI process, co-ordination at this level when dealing with such requests must be considered a vital element in the decision-making process. The CRU was established by ACPO to specifically support the service and I would encourage you all to consult with them when seeking advice and assistance in dealing with the legislation.



QPM, LL.B, Hampshire Constabulary
ACPO Data Protection & Freedom of Information Portfolio Holder

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FREEDOM OF INFORMATION ACT 2000

THE PURPOSE	The Act is designed to: • Foster a culture of openness; • Improve the democratic process by giving greater access to information about the workings of Government and public bodies; • Make Government more accountable; • Improve transparency and accountability and to limit complacency and mal-administration; • Enhance public participation in, and perception of, the democratic process; • Encourage public discussion and understanding of the process of government; and • Modernise, with other policies, the process of Government in the age of the Internet where much more information is expected to be published regularly and made available electronically.
THE BASICS	• The Act gives any individual anywhere in the world the right to information held by the Police Service, subject to the application of exemptions. • The Act gives two related qualified rights – the right to be told whether the information is held and the right to receive the information. • The right of access applies regardless of the purpose of the application.
RESPONSIBILITIES ON PUBLIC AUTHORITIES	The Freedom of Information Act (FOIA) confers two responsibilities on public sector bodies: • The duty to confirm or deny whether the information requested exists; and • The duty to communicate the information. The two main instruments through which the release of information is achieved are: • **Creating and maintaining a publication scheme** The purpose of this is to make available a significant proportion of disclosable information routinely available and accessible without waiting for it to be requested. • **Providing a general right of access to all types of 'recorded' information held by public authorities** Under the terms of the Act, public authorities are required to make available requested information (subject to a range of exemptions) to any individual or organisation anywhere in the world.
VALIDITY	To be valid under the Freedom of Information Act, requests: • Must be made in writing;

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	• Must clearly describe the information being sought; • Can be made from anywhere in the world; • Can be made by an individual or an organisation; • Can be made by letter, fax or email; • Must be legible; and • Must contain the name of the applicant and a return address. To be valid under the Freedom of Information Act, requests do not: • Have to be written on a special form; • Need to mention the Act; or • Need to refer to 'Freedom of Information' (FOI) in any way.
WHAT IS COVERED?	The Freedom of Information Act: • Covers records capable of recovery in any form. • Covers information not data or documents. • Covers information in any format, no matter how it is recorded. • Is fully retrospective: as long as the public authority has the information, it can be requested. All information, no matter how recorded, is subject to the FOIA. This includes written records, typed, handwritten, scribbled notes, e-mails, flip-charts, videos, audio tapes, computer tapes, logs, answer phone messages, tapes of telephone conversations and archived records.

UNDERLYING ALL OF THIS IS THE PRESUMPTION THAT INFORMATION WILL BE RELEASED IN-KEEPING WITH THE SPIRIT OF THE LEGISLATION WHICH EMPHASISES A POSITIVE APPROACH TO DISCLOSURE.

The FOIA gives a general right of access to information to the public. However, the Act makes provision for withholding of information and offers 23 exemptions that may be applied to decline disclosure. For the Police Service, some exemptions are more relevant and applicable than others.

Applying exemptions under the FOIA can be complicated. Detailed guidance is provided in this manual.

ENVIRONMENTAL INFORMATION REGULATIONS

ICO guidance on the Environmental Information Regulations (EIRs) may be located at the following link:

http://www.ico.gov.uk/what_we_cover/environmental_information_regulation/guidance.aspx

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TIMESCALE SUMMARY

The following timescales apply:

'Reasonable interval' (repeated request)	60 working days
Clarification	If not received, can close request after 60 working days

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MYTH BUSTER

Is disclosure under FOI a release to the world?	Information released under FOI is released to the world. Any disclosure is made into the public domain and not just to the applicant. However, consideration may be given to the identity of the applicant when applying s21 and s40 which would then enable the disclosure to be made specifically to an individual.
Does the FOIA relate to information or documents?	The relevant information should be drawn out of documents – there is no need to release the whole document if the material contained therein is not relevant to the request.
What counts as 'Business as Usual'?	Anything that the force provides to partner agencies and members of the public as part of its normal business processes. A list of charges should be posted on the force's publication scheme. A request becomes FOI when FOI is mentioned, when the information can't be supplied under the Business as Usual regime within 20 days or if there is a reluctance to disclose the information requested.
Does an Information Commissioner's Office (ICO) Decision Notice set a precedent?	No. All Decision Notices issued are considered on a case-by-case basis by the Information Commissioner (IC). Tribunal Decisions, however, do set a precedent.
Is the 20 working days set in stone?	No. The time limit can be legally extended when considering public interest factors in relation to qualified exemptions arising from disclosure. Although there is no legal basis for it, it is acceptable on rare occasions to extend the 20 working days (without qualified exemptions) **provided** the applicant is kept informed of the reasons and progress of the request. The scenarios permissible for this extension include occasions where there are problems in retrieving the information, where unexpected staffing issues exist or when dealing with complex requests.
Do I need to record the reasons why I give out/don't give out information?	YES! Your organisation could be asked at any time in the future to provide a rationale if another force is asked the same questions and feels disclosure is inappropriate. So, in short, you must record your evidence of harm and your public interest test (PIT) even if you give the information out.
Is the Act 'applicant blind'?	There is no mention in the legislation that the Act is 'applicant blind'. Although decision-makers cannot take into account the identity of the applicant when making a decision on disclosure, they may need to consider who the applicant is when citing s40 and s21.

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The IPCC hold our investigative material. I can't prevent them from disclosing our information.	There is a protocol with the Independent Police Complaints Commission (IPCC) which is managed by the Central Referral Unit. The relevant document can be viewed on Genesis.
I can't give out staff names in response to an FOI request.	This is a very complex area. You should refer to ACPO guidance which can be found on Genesis in respect of this issue.
I can't reveal the number of officers on duty at a particular time.	You should refer to the ACPO guidance available on Genesis in respect of this issue.
Safer Roads Partnerships can process FOI requests differently from forces.	No, partnerships should follow exactly the same processes as forces as outlined in this manual.
I must provide the applicant the information requested by completing the spreadsheet provided by the applicant	The applicant is able to specify the format required – hard copy, electronic etc –but not how the information is presented (eg. completion of table or spreadsheet). In addition, you are only obliged to provide the information that is already held and are not obliged to create new information in response to an FOI request.
Information held on national systems is not held for the purposes of FOI requests received by forces	This is incorrect. Forces have access to national databases including PNC, IMPACT and CRISP. As such, the information contained on those national systems constitutes information that is held, so even if it falls outside the force area, this information needs to be assessed by FOI experts in response to FOI requests.
Can a request be made about future events information not yet collated or recorded?	Information covered under FOI is all information held at the time a request for information is received, not after receipt of the request.
Where can I find more information on FOI?	Provided you have access to the Internet from a '.pnn' IP address, you can visit the FOI pages on Genesis at www.genesis.pnn.police.uk.
Is the application of s14 applicant blind?	When making an applicant vexatious under s14 of the Act, you can consider the history of the applicant in making FOI requests and other intelligence or correspondence held by your own – and all other - public authorities.

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USING THE ACPO NATIONAL FOI MANUAL OF GUIDANCE

Welcome to the latest version of the ACPO National Manual of Guidance for the Freedom of Information Act.

PLEASE DESTROY ALL PREVIOUS VERSIONS OF THE MANUAL AND WORK FROM THIS VERSION ONLY, 2008-2009

MANUAL OBJECTIVES	• To ensure consistency of approach in applying FOI principles, making FOI decisions and enforcing FOI exemptions; • To act as a user's guide; • To provide a comprehensive resource for FOI Officers; • To ensure consistency in publishing information into the public domain via force publication schemes and in response to FOI enquiries; and • To define those requests that must be referred centrally due to their possible impact on the Police Service as a whole.

BEFORE CONTACTING THE ACPO CENTRAL REFERRAL UNIT PLEASE REFER TO THE MANUAL!

MANUAL STRUCTURE	
Legislation	Under this heading, the specific section of the Act is presented, together with any other relevant information.
ACPO Policy	ACPO interpretation of the Act and ACPO policy are covered under this heading. Falling under this heading is detailed guidance on best practice in relation to each of the key processes.

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INTRODUCTION

THIS IS THE LATEST VERSION OF THE FOI MANUAL.

PLEASE DISREGARD ALL OTHER VERSIONS AND REFER ONLY TO THIS ONE.

Since its introduction on the 1st January 2005, the Freedom of Information Act 2000 has required the Police Service to re-evaluate its notions of secrecy and information-protection in direct response to a new emphasis on the concept of openness and transparency. While the Act does not seek to undermine the Police Service's ability to fulfil its key function of law enforcement, it challenges the organisation to become more transparent and accountable within this legislative framework.

The ACPO FOI Manual of Guidance (MOG) provides the corporate template for processing and managing FOI across the 44 Home Office forces of England, Wales and Northern Ireland, each of which stands alone as an independent public authority. By following one single reference document, national corporacy can be encouraged, ensuring that the Act is interpreted in the same way by each force, safeguarding consistency and equality in the decision-making process.

The manual provides local practitioners with assistance and support at every stage of the FOI request process. It is a 'living document' updated regularly to reflect the evolution of the legislation itself and rulings from the Information Commissioner (IC) and Information Tribunals. The manual contains detailed guidance and advice on dealing with requests for information and managing complaints. It provides interpretation of FOI exemptions and it discusses the categories of information that the Police Service views as significant and in need of protection.

Importantly, the manual explains the functions of the ACPO Central Referral Unit (CRU) and its key role in the coordination of national and high profile issues.

Looking beyond the FOI request process itself, the manual explains how forces should look to release information proactively through local publication schemes.

The Manual of Guidance has been ratified by ACPO and therefore provides the template that forces **must** follow in order to maintain a consistent and coherent approach to the legislation across the Police Service.

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ACPO STATEMENT OF POLICY

Where it is not in the public interest to release information held by the Police Service, the information will be protected. The public interest is **not** what interests the public but what will be of greater good, if released, to the community as a whole. As stated in the Information Commissioner's Office (ICO)/Avon and Somerset Constabulary versus the Guardian Newspaper Tribunal, disclosure must be for a 'tangible community benefit'.

It is **not** in the public interest to disclose information that may compromise the force's ability to fulfil its core function of law enforcement, prevent or detect crime or protect life and/or property.

ACPO is committed to the fair treatment of people regardless of their age, colour, culture, disability, ethnic or national origins, gender, race, religious beliefs or sexual orientation.

The content of this manual has been created to ensure that every individual or group is treated equitably and consistently.

When applying the guidance within this manual, practitioners must consider the legislative requirements that must guide decision-making to avoid discriminating against any group or individual.

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PUBLICATION SCHEME

INTRODUCTION

Section 19 of the Act places a duty on public authorities to adopt, implement, operate and maintain a publication scheme. The publication scheme is an integral part of compliance with the Freedom of Information Act and serves as the ongoing indicator that public authorities are committed to openness and transparency.

A well managed, up-to-date publication scheme will ensure that information is proactively published in accordance with the spirit and intentions of the Act to make information available to the public.

It is important to note that the proactive publishing of information is an organisational responsibility and not solely a matter for FOI Officers. There are wider organisational benefits than those related solely to compliance with the Act. Aside from improved transparency and openness, forces can:

- Manage the content, format and timescales of the publication of information;
- Make wider use of information it already produces for other purposes such as for Police Authority or Home Office use;
- Divert requests for information from the bureaucracy of the FOI process; and
- Enable FOI Officers, when responding to FOI requests, to make greater use of s21 and s22.

LEGISLATIVE REQUIREMENTS

Following its review in 2007/08, the ICO has produced a model publication scheme that can be adopted without modification by any public authority without further approval and will be valid from 31st December 2008 until further notice.

The scheme commits an authority:

- To proactively publish or otherwise make available as a matter of routine, information, including environmental information, which is held by the authority and falls within the classifications.
- To specify the information held by the authority that falls within the classifications.
- To proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within the scheme.
- To produce and publish the methods by which the specific information is made routinely available so that it can be easily identified and accessed by members of the public.
- To review and update on a regular basis the information the authority makes available under this scheme.
- To produce a schedule of any fees charged for access to information which is made available proactively.
- To make this publication scheme available to the public.

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The scheme includes:

- Classes of information and a general definition of those classes;
- The method by which information will be made available; and
- Circumstances where charges may be made.

THE ABOVE CONSTITUTES THE LEGAL REQUIREMENTS UNDER s.19 OF THE ACT.

The ICO has also provided the following guidance:

- Sector-specific guidance manual, known as the 'Definitions Document'; and
- 'How to Operate a Publication Scheme', which includes the ICO enforcement policy. This guidance does not set out any legal requirements but it does provide best practice and will be used by the ICO as a starting point for assessing whether a public authority has complied with the model publication scheme.

DOCUMENTS TO BE VIEWED

In order to implement the new publication scheme, forces will need to review the following documents:

The Definition Document may be found at the following link:
http://www.ico.gov.uk/Home/what_we_cover/freedom_of_information/publication_schemes/definition_document_police_forces.aspx

Information on how to operate the scheme may be located at the following:
http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes/how_to_operate_publication_scheme.aspx

The Central Referral Unit has provided detailed examples of information which must be published on the new publication scheme in order to comply with the Act. The listed information is the **minimum standard** to which forces are required to adhere.

At the time of publication of the manual, this document is still subject to consultation and change. However, the latest version is published on Genesis and must be referred to by all forces.

This document has been drawn up specifically for forces to ensure clarity in what is required to appear within the new publication scheme as a minimum. **This document is for internal reference only and does not need to be published on the publication scheme.**

ACPO STATEMENT OF POLICY

Forces will have a link to 'Freedom of Information' prominently displayed on the front page of their force web-site. The link will direct the public to the Publication Scheme, which will list the following documents:

- The ICO Model Publication Scheme 2009
  – a link to the ICO Website may be provided
- The Police Sector Definitions Document
  – a link to the ICO Website may be provided.

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- Guide to Published Information
  - a detailed section on this document appears below.

GUIDE TO PUBLISHED INFORMATION

- The Guide **must** be published on the force website.
- Each force is required to produce and publish its own unique copy of this document that is force-specific.
- The ICO has stated that the Guide will specify:
  - The information it will routinely make available (based on the Police Sector Definitions Document and the ACPO Minimum Standards Document)
  - How the information can be accessed; and
  - Whether or not a charge will be made for it.
- Each piece of information must be located on the website or accessible via other means to the general public, unless it can be legitimately exempted (see section below on 'Information to be Made Available'). This can include hard copy information that may be sent out on request, for example.
- There is no requirement to make a paper copy of the entire contents of the published information available in libraries or other public areas. However, any public contact points, e.g. front desk at police stations, reception staff, switchboard staff, should have sufficient understanding of how to assist the public if they make a request for information, including checking whether the information is already published or available.
- Use of the Guide means that the information does not have to be published in a discrete area of the force web-site. The information can be held on a page relevant to that subject matter, on another web-site or in paper or disc format held by the owning department. However, forces may choose to operate the traditional method of grouping the published information together.
- The model scheme introduces the concept of 'routinely making information available'. It is not necessary to have all the information in full on the force web-site; this can often be impractical due to the size of documents. The Guide will state how the information can be accessed: i.e. a link to the relevant page on the force web-site, a link to another web-site, a contact number for the public to use to ask for a copy of the information to be sent to them, arrangements for coming into force to view the information.
- An example of this document has been posted to Genesis.

INFORMATION TO BE MADE AVAILABLE

The starting point for ensuring that the required information is made available is the

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Police Sector Definitions Document, which puts a policing slant on the generic classes of information listed in the model publication scheme.

The contents of this document have been the subject of consultation with a group of regional representatives and it is expected that most forces will hold the majority of the information listed.

The ICO expects authorities to regard the document as a 'minimum requirement' and to provide all the information listed unless it can be legitimately excluded.

Information can be legitimately excluded where:

- It is not held;
- It is exempt from disclosure by virtue of an exemption in the FOI Act; or
- The information is not readily available, e.g. the information has been archived in accordance with records management policy; the information is held in an obsolete format and would require specialist techniques to retrieve it.

ACPO has produced further guidance on the application of the descriptions in the Police Sector Definitions Document and this has been published on Genesis. However, it will be up to each force to demonstrate that information has been excluded legitimately.

As well as listing what information is available, your Guide will explain how often the information is updated, whether previous data is still available and for how long, and when data will be archived.

FORMAT OF THE PUBLICATION SCHEME

The manner in which the ICO has devised the model scheme allows for some flexibility in the format. The most important principle is that the information is accessible to the public, regardless of whether they have any knowledge or understanding that the pro-active publication of information is a requirement under the Freedom of Information Act.

ACPO advises that forces can select their preferred format for the publication scheme; either a discrete area on the force web-site or links to where the information is held. The Guide to Published Information must be easily accessible. All staff with a role in handling enquiries from the public must be made aware of the Guide and how to access it.

MONITORING AND REVIEW

The model scheme includes a requirement to review the information published under the scheme.

Forces can approach this in one of two ways:

- The FOI Officer is responsible for adding and updating the information as it becomes available.
- The department owning the information is responsible for adding and updating the information, with the FOI Officer conducting a review at least annually to ensure the

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publication scheme is being maintained.

In either option it is ACPO policy that FOI Officers conduct an annual review of the publication scheme to include how it is operating as well as the information itself. This review should be carried out in conjunction with departments to ensure that best use is being made of the publication scheme and to assess whether new information is being produced that should be made public.

FEES AND CHARGES

The expectation of both the ICO and ACPO is that information will be provided free of charge. A charge can be made in exceptional circumstances and this should be made clear in the Guide to Published Information. Charges can be made for disbursements, e.g. photocopying, postage, or where the authority is legally authorised to charge.

It is ACPO policy that a charge should be made only in exceptional circumstances and where the charge can be fully justified. Information published on the force web-site will not attract a fee (including disbursements) if it is requested in hard copy format. Information that is 'made available' can attract a fee for disbursements where the document is large or where the person requests that it is made available in a particular format, e.g. copied to disk or CD. Photocopying fees should be no more than that specified by the ACPO recommended scale of charges. Actual costs should be charged for postage, packing and media (e.g.disk, CD etc).

COMPLAINTS PROCEDURE

The information on your web-site should include details of how to make a complaint about how the force is operating its publication scheme.

In this first instance, such complaints should be directed to the FOI Officer. The FOI Officer will establish whether the complaint is upheld and provide a written response to the complainant within 20 working days. The written response will include details of how to complain to the ICO if the complainant is not satisfied.

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DEFINING A REQUEST

GENERAL INFORMATION

Under the FOIA any information, documentation or records that are produced internally or held by a public authority, or held by contractors or third parties on behalf of the public authority, are covered by the Act.

All information held by staff associations, such as the Police Federation, Unison, National Black Police Association, Gay and Lesbian Association etc, will not be covered by the Act even though the information may be held on police servers or premises, as long as the information is only for the sole use of those associations or unions.

However, if the information is used or accessed by the police force to execute its functions as an organisation, then it would be deemed as being held by the Police Service and would, therefore, need to be considered for disclosure under the FOIA.

FOI AND ENVIRONMENTAL INFORMATION REGULATIONS

There are many similarities between the two regimes and any request for "environmental information" must be answered in accordance with the EIRs rather than the FOIA. It is possible that in some cases both regimes will be relevant. In these cases, it is essential to be clear which parts of the information fall under which regime so as to apply the correct exemption or exception if information has to be withheld.

Requests for information under the EIRs do not need to be made in writing but can include telephone requests on environmental matters (although in practice it is advisable to make a written record of any verbal requests received).

Under FOI there is a requirement to provide a substantive response to any request for information promptly and in any event within 20 working days. There is some scope to extend this timescale if a qualified exemption is being considered and it is necessary to assess the balance of public interest. On very rare occasions, it is acceptable to extend the 20 working days without a qualified exemption where, for example, the authority is experiencing problems in retrieving the information, where unexpected staffing issues exist or where the request is particularly complex and/or challenging.

The EIRs also require requests to be answered within 20 working days but there is provision to extend the response time to 40 working days, but only for complex and voluminous requests.

LEGISLATION - SECTION 8

(1) In this Act any reference to a 'request for information' is a reference to such a request which-
(a) is in writing,
(b) states the name of the applicant and an address for correspondence, and
(c) describes the information requested.

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(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –
(a) is transmitted by electronic means,
(b) is received in legible form, and
(c) is capable of being used for subsequent reference.

Clearly, **most** written requests for information received by a force are likely to be FOIA requests and by law must be treated as such.

BUSINESS AS USUAL

To overcome the bureaucratic issues associated with many thousands of pieces of correspondence being processed under FOIA, there is an established option, agreed by the office of the Information Commissioner, called 'Business as Usual' (BAU).

This term has been created to cover certain types of requests which can fall outside of the legislation. It is an informal agreement and has no legal basis whatsoever.

Extreme care needs to be taken when taking a request outside of the legislation, as an abuse of BAU could invite an Enforcement Notice from the ICO or, much more seriously, the withdrawal of the BAU as an option for all public authorities.

To be treated as BAU, a request for information must fit the 'Key Criteria' in that:

- It must not indicate that it is an FOIA request.*
- The information will be provided.
- The information will be provided within 20 working days.

* *Decision Notices have indicated that requests that are merely addressed to the 'FOI Department' or the 'FOI Mailbox' would be an indication of the mindset of the applicant. If in doubt, clarify with the applicant.*

It is common to receive written requests for information from partner agencies, and other law enforcement bodies, such as the Crown Prosecution Service (CPS), Local Authorities, IPCC, Home Office, Serious Organised Crime Agency (SOCA) and other forces.

The provision of information to these bodies is an established, key business process, which should not attract the usual FOIA procedure, and should whenever possible be processed as BAU. **

However, such requests can only be processed as BAU when the key criteria are met. If the request falls outside of the key criteria, there is still an option to capture it within BAU, provided written confirmation that the requestor does not require it to be processed under FOIA is sought. In the case of any doubt, a formal withdrawal obtained from the applicant will provide an audit trial, protecting the receiving authority.

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*** Care should be taken that just because the requestor is a member of such an organisation, that they are not exercising their private rights under FOIA. If in doubt, ask!*

It is common for numerous requests for information to come into force media departments. In the vast majority of cases this will take the form of a telephone call, which in itself is not a valid FOIA request, and should be dealt with appropriately.

However, care needs to be taken with written requests, which are highly likely to conform with s8 of the Act and will therefore meet all the legal criteria that define an FOIA request. In order for these to be processed as BAU, it **must** fit the 'key criteria'.

If in any doubt, enquiries must be made with the applicant as to their intentions and if necessary, written confirmation obtained. Written confirmation must be received from the applicant prior to any request being withdrawn under FOI and processed through Business as Usual channels.

It is recognised that some information is normally provided for a fee, such as road traffic collision reports. A request for the provision of such data can be dealt with informally if the 'key criteria' are met. Otherwise, the request will need to be processed under the legislation and should attract the s21exemption, Information reasonably accessible by other means. See also the chapter on the publication scheme.

Practitioners should split up questions before processing/proceeding.

Each subject area contained within a request is counted as a separate request. This is particularly relevant when considering the Fees Regulations (see relevant section in this manual) and the requirements for partial NCNDs where parts of a request fall under the Data Protection Act.

A basic example of this is if a request were received asking for general information about police vehicles and bonus payments to the Chief Constable, this must be divided into two individual requests.

A more complex illustration would be one of the types of requests commonly received by Safer Roads Partnerships where a recipient of an NIP makes a request for information personal to themselves (and their case) combined with training details of officers, calibration certificates of cameras and statistical information on the site.

In this example, there may be a requirement to provide an NCND response to the element of the request relating to the individual's personal details and the existence of the offence itself, coupled with the requirement to provide other more generic information– such as officer training details and calibration certificates - under FOI. In order to facilitate this multiple response, practitioners are advised to break the request down into its component parts and respond accordingly.

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POLICE SERVICE REFERRAL CRITERIA

INTRODUCTION

There are certain risks associated with the disclosure of the types of information held by the Police Service. These risks range in severity from the minor upset of a partner agency to the death of an individual and/or damage to the national infrastructure.

These outcomes can be caused by a wide range of scenarios from criminal, concerted campaign or media use of the legislation to poorly thought out release or withholding of information. Actually refusing to provide information, even if appropriate, can sometimes be more damaging than releasing it, due to the adverse publicity and complaints it may attract.

In order to combat these issues, and reduce the risks, a Central Referral Unit has been created and ratified by all Chief Constables in the UK. The CRU's remit is to:

- Provide advice, best practice and consistency in response with regard to FOIA requests that meet the referral criteria.
- Co-ordinate strategic development of FOIA throughout the Police Service.
- Maintain and develop relationships with partners, other agencies, regulatory bodies and requestors at a national level.
- Deliver FOIA training and promulgate best practice appropriate to the needs of the service.
- Proactively monitor potential criminal and misuse of the legislation in order to protect the service.
- Analyse intelligence.

Ensuring delivery of this remit is the responsibility of the respective ACPO and Association of Chief Police Officers of Scotland (ACPOS) portfolio holders managed by a Chief Inspector in each case. The CRU will centrally co-ordinate combined activity and its location will be determined by the ACPO portfolio holder (currently in Hampshire).

THE PROCESS

Forces should analyse all FOIA requests they receive using the referral criteria on page 29.

A request being referred must be accompanied by the CRU template on page 30. Please note that this template must be completed in its entirety for consideration by the CRU and incomplete templates will be returned. If information is not available to complete a particular box on the template, please indicate this.

In the first instance issues requiring advice or requests for referral should be sent by e-mail to acpo.advice@foi.pnn.police.uk.

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Central Referral Unit Referral Criteria V3

All requests which relate to the below information must be sent to the CRU, using the prescribed template.

Once referred a response must not be sent to the applicant without a response from the CRU being received.

Category	Subjects
High Profile	CHIS/Informants. RSO or MAPPA. Relating to terrorism or domestic extremism.
Tactical	Surveillance/RIPA/witness Protection. **All** s23/24 information or anything relating to security service/SOCA. VIP/Royalty Protection. Covert equipment or secure systems (e.g. ANPR, PNC etc.) Firearms (police or criminal) including CBRN and explosives. All NCND applications apart from local 40(5).
Strategic	Information marked 'confidential' or above. Reports otherwise deemed 'sensitive'. Unpublished procedures. Unpublished statistics, resource or finance information which would be a harmful disclosure. 3rd party documents from a national body (i.e. Home Office).
Operational	High profile investigations. Investigations where any disclosure is being considered. High profile/national operations. Discipline or PSD– related information where any disclosure is being considered.
Human Resources	Sensitive organisational information/resources/structures

In addition to the above the following should also be referred:

- Requests which may be 'national', regardless of previous disclosures.
- Requests for an internal review of a previously CRU referred request.
- An appeal with the ICO, regardless of whether it has been referred before.
- An information tribunal, regardless of whether it has been referred before.

Forces may also refer any other request which they require assistance in responding to or are having concerns about.

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ACPO Freedom of Information Referral Template V1

When submitting a request to the Central Referral Unit, please complete the below grid:

There is no requirement to complete this form if responding to a CRU circulated request.

Your Force Reference:	
Date Request Received:	
Is this an initial submission/internal review/ICO Appeal/Tribunal.	
Details of the applicant: • Name • Company/Organisation • Address • E-Mail • Phone	
Actual wording of Request (or attach copy to e-mail)	
Do any parts of request require clarification? If so, what steps have already been taken?	
Referral Category:	
Referral Subject Area:	
Reason for Referral:	
Person Dealing with Request:	
Initial Thoughts on Disclosure:	
Any Additional Information:	

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ACKNOWLEDGING A REQUEST & PROVIDING ASSISTANCE

LEGISLATION – SECTION 16

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

ACPO POLICY

- The Police Service has a duty to provide advice and assistance to applicants making FOI requests.
- Whilst there is no requirement to acknowledge a request under the Act, the Police Service will acknowledge all requests received. The acknowledgement should include the date the request was received and an indication of the estimated time within which the request will be dealt.
- Where necessary, the applicant should be contacted to clarify the request that has been submitted.
- Procedures for dealing with FOI requests should be published under the force publication scheme.
- Under the FOIA, **all** members of staff within an organisation are obliged to provide assistance to any person requesting information.
- Where an applicant is unable to make a request in writing (for instance due to illiteracy, disability or illness), assistance could include advice on where appropriate help and support can be found (e.g. Citizens Advice Bureau). In exceptional circumstances, a note of the request can be made on behalf of the applicant and sent to them for confirmation.
- If advice and assistance has been provided and the force is still unable to identify and locate the requested information, the force is not expected to seek further clarification.
- Where further clarification has been sought and the applicant has not responded, the force may close off the request after 60 working days if no further clarification is received.

It is best practice and highly recommended that the applicant is contacted, verbally if possible, to try and assist in identifying the exact information required from the authority. In the case of media organisations, it is recommended that this contact is purely about the request and where the media organisation is asking specific questions about the request process or police force, they should be directed to the Media Services Department.

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TIME FOR COMPLIANCE

LEGISLATION - SECTION 10

(1) Subject to subsections (2) and (3), a public authority must comply with section (1) promptly and in any event not later than the twentieth working day following date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that –
(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied, the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which the notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may-
(a) prescribe different days in relation to different cases, and
(b) confer a discretion on the Commissioner.

(6) In this section –
'the date of receipt' means –
(a) the date on which the public authority receives the request for information, or
(b) if later, the day on which it receives the information referred to in section 1(3); 'working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

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ACPO POLICY

Where necessary, the 20 working day time scale will be extended to ensure that no decisions are rushed. **It is ACPO's belief that it is better to take time to make a decision and get it right than rush and make an inappropriate decision.**

The 20 working days time limit becomes effective on the day of receipt or the date on which further information that has been reasonably required has been received. Where a fee is charged, the 20 day compliance time period will begin again upon clearance of the applicant's cheque.

If a request is received and there is an 'out of office' with an alternative address, the request has not been 'received' and the onus falls back on the applicant to re-direct. If an 'out of office' is on with no alternative, the request was received on the date it arrived in the original mailbox.

Where a qualified exemption is being applied, the public authority may 'stop the clock' and extend the deadline for consideration of public interest factors for a 'reasonable time' to reach a decision. Reasonable time is not defined in the Act though ACPO policy would suggest as soon as is practicable and, in any case, within 60 working days.

It is imperative that the requestor is kept regularly informed of progress. A target date for completion must also be provided the applicant.

When extending the time compliance deadline on requests, it is ACPO policy that the PIT extension should be 20 working days to a maximum of 3 such extensions, taking the total time extension allowed to 60 working days.

PIT EXTENSION

It is possible to extend the 20 working day deadline in cases where the balance of the public interest is being considered. When extending the deadline for a request, practitioners must comply with sections 10 and 17 of the Act, as technically not being able to provide the information requested within the 20 day deadline is a refusal. Therefore when extending that deadline a s17 refusal notice must be issued.

As this extension can only be made to consider the balance of the public interest, then obviously only the qualified exemptions that are engaged must be identified. If absolute exemptions also apply, then they must also be cited in an extension letter as per s17 which would have to include an outline of why they apply, unless it is obvious as to why they do.

In some situations, a qualified exclusion may apply to the duty to confirm or deny and, due to the need to consider the balance of the public interest, it may not be possible to confirm or deny whether the information is held within the 20 working day deadline. If time for complying needs to be extended in relation to the duty to confirm or deny, the letter to the applicant must be very carefully drafted to ensure that no indication is given as to whether or not the information requested is held.

Also remember that if no exemptions apply to some of the information requested, it should be provided within the 20 days as usual. The time deadline for the provision of

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this information cannot be extended. It would be good practice to provide this information together with the extension notice.

Where the time is being extended in reliance on section 10(3), a section 17 notice is still required to specify which exemptions apply to the information.

It is strongly recommended that the extension deadline is set as early as possible and in any case within (another) 20 working days. In exceptional cases further extension notices can be issued but only to a maximum of 60 working days (3 extensions).

It is recommended that a PIT extension response should include:

'The FOI Act obliges us to respond to requests promptly and in any case no later than 20 working days after receiving your request. We must consider firstly whether we can comply with section 1(1) (a) of the Act, which is our duty to confirm whether or not the information requested is held and secondly we must comply with section 1(1)(b), which is the provision of such information. However, when a qualified exemption applies either to the confirmation or denial or the information provision and the public interest test is engaged, the Act allows the time for response to be longer than 20 working days, if the balance of such public interest is undetermined.

In this case we have not yet reached a decision on where the balance of the public interest lies in respect of either of the above obligations. We estimate that it will take an additional [xx] days to take a decision on where this balance lies. Therefore, we plan to let you have a response by [date]. If it appears that it will take longer than this to reach a conclusion, you will be kept informed.

The specific exemption(s) which apply in relation to your request is/are: [include both qualified and absolute indicating which is which and include a brief explanation of why it/they apply unless it is not apparent or unless you are not required to do so by virtue of section 17(4)].

Insert usual complaint information

BUSINESS AS USUAL

'Business as Usual' requests will be dealt with as part of the normal business processes of the force. If this process fails the applicant – where access to requested information is refused or if the information cannot be provided within 20 working days – the enquiry will become a formal request for information under FOI.

Under the Code of Practice, the Police Service should not delay in responding until the end of the twentieth day if the information could reasonably be provided earlier.

It is ACPO policy to provide applicants with the information requested **as soon as possible**.

Where clarification is required, the authority may close off the request after 60 working days if no further correspondence is received from the applicant.

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TRANSFER OF REQUESTS

LEGISLATION – SECTION 10

This area of the Act is governed by Code of Practice 45.

ACPO POLICY

Requests may be completely transferred where the force holds none of the information requested or partially transferred where the force holds some of the information requested.

WHERE NO INFORMATION HELD

- The applicant must be informed as soon as possible that no information is held.
- If the force is aware of where the information may be held, the request should be transferred with the applicant's consent.
- If the force reasonably concludes that the applicant is not likely to object, the force may transfer the request without referring to the applicant. The applicant should be informed that the request has been transferred.
- As an alternative, the force may suggest that the applicant re-applies to the authority it believes holds the information.
- A request should not be transferred without first confirming with the second force or public authority that the information is held.
- The force should provide the applicant with contact details for the relevant authority.

WHERE INFORMATION PARTIALLY HELD

- The applicant must be informed as soon as possible that only part of the information is held.
- Where the information is partially held elsewhere and the force can identify the authority or other force that holds the information, the force may then transfer the remainder of the request to another force or public authority.
- If the force reasonably concludes that the applicant is not likely to object, the force may transfer the request without going back to the applicant but should still inform the applicant that the request has been transferred.
- The request should not be transferred without first confirming with the second force or public authority that the information is held.
- If a force believes an applicant is likely to object, it should only transfer the request with consent. If there is any doubt, the police force may prefer to contact the applicant and suggest that they make a new request to the second authority.
- The force should provide the applicant with contact details for the relevant authority.
- Alternatively, the force may suggest that the applicant re-applies to the authority that the police force believes holds the information

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THE RECEIVING AUTHORITY'S OBLIGATIONS

- The receiving authority must comply with its obligations as if it had received the request direct from the applicant.
- The time for complying with such a request commences from the day that the receiving authority receives the request.

CONSULTATION WITH THIRD PARTIES

Forces should be aware of and adhere to s45 of the Freedom of Information Act which covers the provision of advice and assistance, the transfer of requests between public authorities and the consultative process.

When the legal rights of a third party may be affected by disclosure, the Police Service will consult with that third party prior to disclosure, unless consultation is impracticable (for example, because the third party cannot be located or because the cost of consultation is disproportionate). In this case, the Police Service should consider what is the most reasonable course of action under the requirements of the Act and the individual circumstances of the request.

Where the interests of more than one third party are affected and they have a representative organisation, consultation with the representative organisation, or a representative sample of third parties if there is no representative organisation, is sufficient.

If a third party does not respond to consultation, the force has a duty to disclose information under the Act within the time limits.

In all cases, it is the receiving force/authority that determines whether information should be disclosed. A refusal to consent to disclosure by a third party does not, in itself, mean that information should be withheld.

Consultation is unnecessary where:

- It is not intended to disclose the information;
- The views of the third party cannot affect the decision (e.g. where legislation prevents or requires disclosure); or
- The information must be provided because no exemption applies.

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THE DECISION-MAKING PROCESS

ACPO POLICY

In order to process a request for information effectively, ACPO has devised a 'best practice' model. To fully understand the model and its application practitioners are advised to attend one of the ACPO two-day decision maker/reviewers' training courses.

This process works equally well for the initial decision and any subsequent internal review.

MODEL REQUEST PROCESS
Before proceeding with the request proper the following points need to be answered.

- Is it business as usual? (See ACPO Policy on Defining a Request)
- Is it vexatious or repeated? (See s14 Guidance)
- Is it already in the public domain? (See s21 and chapter on Publication Scheme)
- Is it a valid request? (See 'Defining a Request')
- Is the information held?
- How much will it cost? (See s12 Guidance)
- Should the CRU be notified? (See Police Service Referral Criteria)

Once these points have been successfully resolved, deciding on a suitable response can begin in earnest.

The legislation places two responsibilities on a public authority: confirming what information is held and secondly providing that information. As a result of these responsibilities, the following process has actually to be done **twice**, once for section 1(1)(a) and then for section 1(1)(b). In both cases any harm (prejudice) in disclosure needs to be identified. This harm can be real, actual or likely, but in all cases it must be more than mere supposition, not generic and it must be evidenced.

For example, to state 'all witnesses in an investigation will be caused stress and anxiety, if their information is disclosed' **is not** valid evidence. Whereas 'all the witnesses in the investigation have stated that they will be caused undue stress and anxiety due to previous actions of the offender, and these views are documented' **is** valid evidence.

This harm must be documented regardless of whether or not it needs to be later communicated to the applicant. This is especially relevant when the final decision favours disclosure as the rationale may be required to be evidenced later in order to avoid a precedent-setting effect.

THE PROCESS IN RESPECT OF SECTION 1(1)(A)
For section 1(1)(a) (*The duty to confirm whether information is held)*, the following question should be considered:

'Is there any harm in confirming the information is, or is not, held?'

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Any harm identified must refer only to harm in confirming whether the information is held. Harm in disclosure of the information itself is irrelevant at this point and will be considered later in the process under s(1)(1)(b).

For example to confirm that information is held in relation to a covert operation will effectively be confirming that the covert operation in question exists.

If there is harm in complying with section 1(1)(a) it will invariably attract a Neither Confirm Nor Deny (NCND) response which then removes an authority's obligation to even contemplate section 1(1)(b), the actual disclosure (Refer to the section in this manual relating to NCND).

If no harm may be identified in confirming or denying the information held, then stage 2 of this process must be considered.

THE PROCESS IN RESPECT OF SECTION 1(1)(B)
For section 1 (1)(b) (*If the information is held it should be communicated to the applicant),* the question now becomes:

'If I can confirm the information is held, is there any harm in disclosing it?'

Once any harm is established, it will directly relate to which exemptions are engaged since there is a direct correlation between the two (harm and exemption).

In the example of witnesses in an investigation, apart from the obvious engagement of s30 (Investigations), there is now evidence of s38 (Health and Safety). If no harm can be identified and no class-based exemptions apply, then generally the information should be released.

For each section of the Act, any harm identified is now subject to a public interest test (See the section in this manual on the public interest test).

It is important to remember that like the harm, sections 1(a) and (b) will each require a different PIT. For s1(1)(a) the consideration is whether there is any tangible community benefit in confirming something is held, whereas with s1(1)(b) the considerations are directly related to the content of the information itself.

The process requires that all harm and public interest issues need to be firmly established, and that is regardless of the type of exemptions that may be engaged. Lord Falconer has stated that 'simply because exemptions apply, this does not mean that the information will not be disclosed.' This is a direct reference to the occasions when even potentially sensitive information may be released if it is for the greater public good.

Only once the harm has been evidenced, the exemptions identified and any public interest factors outlined, can the final decision on disclosure be taken.

Following this process ensures consistent application of the legislation, effective recording of why decisions were made and facilitates the whole process of responding to an applicant. In most cases, the deliberations derived from the process will actually

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form the main bulk of a response letter.

REQUEST PROCESS – BEST PRACTICE
Please refer to page 41.

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Insert attached page

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REFUSING REQUESTS FOR INFORMATION

LEGISLATION – SECTION 17

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

(a) states that fact,

(b) specified the exemption in question, and

(c) states (if that would not other wise be apparent) why the exemption applies.

(2) Where -

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decisions will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given without such time as it reasonable in the circumstances, state the reasons for claiming -

(a) that, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all circumstances if the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or section 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where-

(a) the public authority is relying on a claim that s14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request

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for information, stating that it is relying on a such a claim, and

(c) it would in all circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by s50.

ACPO POLICY

When refusing either all or part of a request because either:

- The request is deemed vexatious or repeated;
- The cost of compliance exceeds the prescribed limit; or
- The information requested falls under one of the exemptions listed in part II of the Act

then a refusal notice must be issued which complies with s17 of the Act.

There are two occasions when a refusal notice is not required. These are:

- Firstly if it appears that a request is vexatious or repeated and there has already been a refusal notice issued to the applicant in relation to a recent similar request stating that the request is vexatious or repeated and it would be unreasonable to do so again.
- Secondly, if no information is held in relation to the request, although this must still be confirmed in writing and within the 20 day deadline.

A refusal **must** state that the information is being refused, specify the exemption(s) in question and (if it is not otherwise apparent) state why the exemption applies (Please also refer to the NCND chapter).

This means in practice that the section and subsection of an exemption must be used and its title, which type of exemption it is (qualified, absolute etc.) and an explanation as to what it means and if it is not obvious, why it applies.

If NCND is **not** being applied and qualified and/or prejudice-based exemptions are engaged, the s17 notice will also need to contain the evidence of harm, the public interest test and the balance test. Plain English should be used wherever possible and the duty to advise and assist the applicant should always be borne in mind.

A refusal notice should be signed by the decision-maker and full details of the authority's complaints procedure and particulars of the rights conferred by section 50 (complaint to the ICO) must be included in all responses.

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INTERNAL REVIEW

Section 12 of the Section 45 Code of Practice places a duty on public authorities to put a complaints process in place to ensure that applicants are able to ask the public authority for an internal review if they are not content with the authority's decision on release. This provides a first review stage for applicants.

If a complaint is received from a dissatisfied applicant, written acknowledgement of receipt must be provided to the applicant with an indication of when a response may be expected.

The ICO is advocating that this must be achieved within 20 working days; however the timescale is not specified within the legislation. ACPO suggests that an internal review should be completed as soon as practicable and in any case within 2 calendar months from the date of complaint. In all cases, effective communication should be maintained with the applicant and a record kept of the process as the ICO may later ask for justification for any delay.

It is important to be aware that the internal review stage is an opportunity to consider a case completely afresh. It is not designed to quality assure the original decision, although ensuring the original decision complied with the legislation is an important component.

Internal reviews should be conducted by a person who was not party to the original decision on disclosure. Each force should give active consideration to training and maintaining a sufficient number of staff who can be called upon to conduct these reviews.

In complex and strategically important cases, consideration should be given to the review being conducted by a panel consisting of stakeholders in the release of the information, a senior member of staff and an FOIA expert.

The CRU must be informed if any requests with which it has been involved have gone to internal review or any other cases which warrant the formation of a panel. Such cases are likely to have national implications.

Internal reviews should not be overly bureaucratic, but must be a fair and impartial means of reviewing decisions made during the original consideration of whether to release information. If the best practice model has been followed there should be a record of how the original decision was made and these thought processes of the original decision maker will be important to the internal review.

The applicant **must** be fully informed of the outcome of the internal review.

An internal review can have the following outcomes:

- The original decision is upheld;
- The original exemptions and/or public interest test may be replaced by alternatives either in part or whole; or

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- The original decision is reversed whether in part or whole.

In all cases, there is a requirement to notify the applicant of the result of the internal review. If revised exemptions or public interest test are being relied upon, a new s17 refusal notice must be issued.

Where the original request is upheld, the applicant **must** be made aware of their further rights of appeal to the Information Commissioner's Office. Full contact details for the Information Commissioner's Office must be provided to the applicant.

Irrespective of the final decision in respect of the internal review, the final outcome **must** be recorded.

AUDIT TRAIL AND RECORD DISPOSAL
A full record of each request, including all aspects of the decision-making process, should be retained for two years from the conclusion of any internal complaint/appeals process.

INFORMATION COMMISSIONER COMPLAINT
If an applicant is still dissatisfied following an internal review, a complaint may be lodged with the Information Commissioner.

The Information Commissioner's Office is the independent statutory body which polices the operation of the Freedom of Information Act, as well as the Data Protection Act.

If a force is notified that the ICO is dealing with a complaint against it, the CRU must be informed.

Under the Freedom of Information Act 2000,the role of the Information Commissioner is as follows:

- The Commissioner may issue general guidance on good practice, or 'practice recommendations' directed at particular authorities.
- If the Commissioner has received a request for a decision or considers certain information is relevant to determine whether a public authority has complied with Part I of the Act or the Codes of Practice, he may serve an Information Notice on any public authority requiring it to supply that information to him.
- Where the Information Commissioner considers a complaint, he will issue a Decision Notice setting out his view on whether the Act has been complied with. Where a breach of the Act is identified, the notice will specify the steps which must be taken by the authority in order to comply with that requirement and the timescale for compliance.
- If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act, he may serve on the authority an enforcement notice requiring the authority to take particular steps within a specified time to comply with those requirements.
- Failure to comply with an Information, Decision or Enforcement Notice may be dealt with as though the public authority had committed contempt of court.

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INFORMATION TRIBUNAL

If either the original applicant or the authority is not satisfied with the Decision Notice issued by the ICO, an appeal can be made to the Information Tribunal. On hearing the appeal, the Information Tribunal may uphold the notice in its entirety, substitute an alternative notice or dismiss the notice.

The CRU must be informed of all cases that are going to Information Tribunal.

A hearing will be conducted orally or by papers and there may be a 'Direction Hearing' first to establish how the appeal will proceed. If being heard orally, a location will be agreed on by the parties and the Information Tribunal. At least 14 days notice of when and where it will be heard will be provided.

The hearing is a formal courtroom process which has its own protocol. This is less formal than a criminal court and the Tribunal Proper Officer is available to brief all parties on courtroom protocol.

A tribunal hearing will normally consist of a legally qualified Chairman and 2 lay panel members, the Information Tribunal Proper Officer(s) or clerk to the Tribunal, the Information Commissioner or his legal representative, the individual making the appeal - the appellant and legal representative, witnesses and possibly members of the public or press in high profile cases - the cases are usually heard in public.

If a witness refuses to attend a hearing the Information Tribunal can issue a summons to order that individual to attend.

Forces will need to ensure that they have adequate legal representation and if not making the appeal themselves may find it advantageous to be co-joined with the ICO.

ACPO strongly recommends that the original decision-maker is present at the hearing even if not called as a witness. Experience has shown that they invariably have knowledge about the case which may prove useful during the appeal.

The decision of the Information Tribunal may in turn be appealed on a point of law to the High Court of Justice (England and Wales), Court of Session (Scotland) or High Court of Justice in Northern Ireland (Northern Ireland).

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NCND

LEGISLATION – SECTION 1

Section 1 of the Freedom of Information Act 2000 provides two distinct but related rights of access to information which impose corresponding duties on public authorities. These are:

- Section 1(1)(a) the duty to inform the applicant whether or not information is held by the authority, and, if so,
- Section 1(1)(b) the duty to communicate that information to the applicant.

THIS IS A MANDATORY REFERRAL WHEN USING S23(5) AND S24(2)

ACPO POLICY

GENERAL

The Act refers to the first duty as 'the duty to confirm or deny'. Although the second of these duties is the one with which most applicants will be concerned, both have equal weight and, when information is exempt but subject to the public interest test, the test is applied to both s1(1)(a) and s1(1)(b) independently.

The thinking behind the separate provisions is quite straightforward. If information has been requested but is not held, it will normally be reasonable to inform the applicant of this fact. However, there may be some exceptional cases where it would not even be right to confirm or deny if the information requested were held. For instance it would not make sense to allow criminals to discover if they were under suspicion and, if so, to discover the extent of those suspicions.

WHY IS NCND NEEDED?

The principle of NCND is long established and is needed to protect harm which may arise if an authority has to confirm or deny whether it holds particular information. In some situations, simply confirming or denying whether an organisation holds a particular category of information could in itself disclose sensitive and damaging information.

A good example of this practice is where a police force is asked for all the information that they have on surveillance operations in relation to particular premises. Any information held is likely to fall within the section 30, as it is held by that authority for the purposes of a criminal investigation (the application of section 30 is subject to the balance of the public interest but there is a strong public interest in maintaining the integrity of surveillance operations).

However, simply refusing to provide the requestor with the information would not go far enough to protect the integrity of any operations. If the police force were to confirm or deny that they have the information then that would, in itself, indicate whether or not the police have had an interest in the premises concerned.

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To disclose even that amount of information could be prejudicial to any operations or investigations that are taking place or may take place in the future. Hence the necessity to NCND the response under section 30(3) of the Act.

WHEN CAN NCND BE USED?
All exemptions except section 21 (Information accessible to the applicant by other means) include a provision which enables public authorities, in certain circumstances, to neither confirm nor deny whether it has the information that has been requested.

When withholding information, it is necessary to:
(a) Consider if the exemption applies; and
(b) Consider whether (if the exemption applies) it is necessary for the force to neither confirm nor deny that it holds the information requested.

There is still a requirement to assess the exemption that would (if the information were held) be engaged, even when an NCND approach is adopted. As before these principles are split into qualified and absolute exemptions as outlined below:

NCND QUALIFIED EXEMPTIONS
In cases where the information (if held) would be subject to a qualified exemption, a public interest test must be applied.

If a public authority does not hold the requested information and the applicable exemption is prejudice-based, it should first consider whether denying that it holds the information would have any of the prejudicial effects stated in the section, and then apply the public interest test.

If a public authority does not hold the requested information and the exemption being considered is class-based, a public authority needs to consider whether it would apply **if** the information **were** held.

When a public authority holds the requested information, two public interest tests must be separately applied – to the disclosure of the information itself and to the fact that information is held – and it should not be assumed that the outcome in each test will be the same.

NCND WITH ABSOLUTE EXEMPTIONS
Where the information requested is subject to an absolute exemption, there is clearly no need to undertake a public interest test on the information held (or not); what is necessary to determine is would the confirmation or denial of the existence of the information requested (that has been assessed as covered by an absolute exemption) in itself breach these principles. If this is the case then there will be a requirement to NCND the absolute exemption claimed.

An example of when this would be necessary would be if a request were received asking if a named individual had been subject to a criminal conviction. Clearly any response would be subject to s40 exemption as it relates to personal information and any disclosure would breach the individual's Data Protection rights. That said, if the force

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were to confirm that it held information on that individual by exempting the request, this would provide the applicant with information about a named individual again breaching his/her Data Protection Rights. Clearly there is a need to NCND under section 40(5).

RESPONDING TO THE APPLICANT
When a public authority refuses either to disclose requested information or confirm or deny that any information is held, it must under section 17(1) of the Act, issue a refusal notice stating the fact of refusal, the exemption used and why the exemption applies. A public authority should be clear in its refusal notice that where the public interest test applies, it has applied it in relation to each duty individually. That said, section 17(4) states that a public authority is not obliged to make a statement as to the reasons why NCND is engaged IF the statement itself would involve the disclosure of information which in itself would be exempt. It is the view of the Information Commissioner that whenever possible public authorities should provide an explanation on why the NCND principles are engaged, though if this will compromise the NCND stance then a standard s17(4) statement can be provided.

SECTION 17(4) REFUSAL
An example of a section 17(4) refusal is shown below:

The [force] neither confirms nor denies that it holds any of the information requested. To give a statement of the reasons why neither confirming nor denying is appropriate in this case would itself involve the disclosure of exempt information, therefore under section 17(4), no explanation can be given. To the extent that section [add section] applies, the [force] has determined that in all the circumstances of the case the public interest in maintaining the exclusion of the duty to neither confirm nor deny outweighs the public interest in confirming whether or not information is held.

PARTIAL NCND
There can be circumstances where a partial NCND is engaged; a public authority may confirm that some information is held (this may be supplied or exempted) though to confirm that this represents **all** the information in the possession of the authority would in itself be harmful. Authorities may then add to their response that they neither confirm nor deny (under the respective exemption) that any other information is held. This more frequently occurs with the use of exemptions s23 and s24 considered below.

THE USE OF NCND FOR SECTION 23 AND SECTION 24 MATERIAL
There are clearly considerable sensitivities in relation to material held that may have been provided by or relate to an exempt body, (e.g. the Security Services or SOCA), or would prejudice national security. For these cases there is often a requirement to combine the NCND approach for both s23 and s24 exemptions to prevent disclosing information that would itself breach these principles. **These cases will be mandatory referrals to the CRU where advice can be provided.**

COMBINED USE OF S23(5) AND S24(2) EXEMPTIONS TOGETHER
There is considerable potential overlap between the information covered by s23 and that covered by s24. Clearly information about the existence or otherwise of information from, or relating to, a security body is information which is also capable of being

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exempt under s24(2), for the purpose of safeguarding national security.

The use of s23(5) and s24(2) together is possible under the Act (in contrast to s23(1) and s24(1) which are expressly mutually exclusive). The ability to use s23(5) and s24(2) together is important where it is necessary to answer a request in a way that preserves NCND.

Where NCND needs to be maintained for national security purposes, it is important that whenever an exemption from the duty to confirm or deny the existence of information is claimed under s23(5) consideration is always given to claiming the equivalent exemption under s24(2).

Of course, use of s24(2) will require a full consideration of the need for the national security exemption and the public interest in disclosure. However, consideration of the combination is necessary because the nature of s23 inevitably discloses that a security body is involved (or that the absence of involvement of a security body is significant) and use of s23 and s24 together may be the only way that the 'non committal' response that NCND requires, in order to work, can be maintained.

Further, so that it cannot be readily inferred that use of the two exemptions together is itself an indicator of the relevance of security body activity, it is important that where s24 is relied on, reciprocal consideration is given to the justification for relying on s23. NCND may be undermined not only by confirming that there is information held (i.e. implying that the security bodies have an interest in the subject) but also by confirming that there is no information held (i.e. implying that the security bodies do not have an interest).

This whole field is complex and requires considerable experience both in selection of appropriate exemptions and the framing of a response which will need to consider the issues surrounding s17(1) and s17(4) responses. Guidance will be provided by the CRU and draft outline response with which to 'build' the reply letter can be supplied. As previously stated consultation with relevant partner agencies is essential hence the mandatory referral criteria to the CRU where appropriate specialist advice and consultation can be achieved.

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VEXATIOUS REQUESTS

LEGISLATION - SECTION 14

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

THIS IS A MANDATORY REFERRAL

ACPO POLICY

ACPO is confident that most members of the public are exercising their rights under FOI sensibly and responsibly.

However, there is a risk that some individuals and some organisations may seek to abuse their rights with requests which are manifestly unreasonable and which would impose substantial burdens on the financial and human resources of public authorities.

At the same time, ACPO emphasises that authorities should not conclude that a request is vexatious or repeated unless there are sound grounds for such a decision. **An authority may well need to defend its decision to the ICO.**

This is more likely to be successful where:

- A request, which may be the latest in a series of requests, would impose a significant burden **and** at least one of the following:
  - Clearly does not have any serious purpose or value;
  - Is designed to cause disruption or annoyance;
  - Has the effect of harassing the public authority; or
  - Can otherwise fairly be characterised as obsessive or manifestly unreasonable.

The following list is not exhaustive, but evidence needs to be recorded which would show that either:

- An applicant had a clear intention to cause an authority the maximum inconvenience through a request.
- The authority has independent knowledge of the intention of the applicant.
- The request clearly has no serious purpose or value (with no discernable public benefit).
- After a refusal and PIT, the applicant has come back and asked for everything exempt to be redacted and the effect of such redaction would render the information useless.
- The request is obsessive or manifestly unreasonable, such as repeatedly asking for

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the same information. (These should not be confused with tedious requests which are more of an occupational FOI hazard.)

One of the most effective methods for establishing these points is to actually make contact with an applicant and ask them why they want the information. Although legally such an explanation cannot be demanded, there is nothing preventing the question from being asked.

For example, an applicant may make a request asking for the total number of windows in a particular building. On the face of it this would seem frivolous and with no real purpose. But if upon contact you establish that the applicant is actually a window cleaning firm looking to tender for new business, the vexatious label quickly evaporates, whereas a response of 'because I just want to know' would probably keep s14 engaged.

Overall, being 'applicant blind' but taking into account the actual effect of the request itself is the option most likely to be effective when using s14.

With regard to s14(2), the Police Service is not obliged to comply with a request if it is identical or substantially similar to a request from the same person or a group or body, apparently acting in concert (a campaign request), unless a reasonable interval has lapsed between compliance with the previous request and the making of the current request. The reasonable interval may be defined as 60 working days.

The important point to note with this section is that the requests must be asking for the same information, not just similar information. The latter would be more appropriately dealt with by the use of rules within cost, s12.

REFUSING A REQUEST

After receiving a request that is subsequently deemed to be vexatious or repeated, the authority should notify the applicant accordingly and inform them why this is the case. It need not, however, provide a notice of refusal in the case of repeated requests **if a similar notice has been given previously**.

However, even once a notice has been given, a request for an internal review must still be processed the same as all complaints. It is only after the complaints process has been exhausted, that an authority will be able to ignore any subsequent requests.

The ICO Charter may be of assistance when determining whether an applicant may be made vexatious under s14 of the Act. This document is located at the following link:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

If the use of s14 is being contemplated the CRU should be notified so that a database of evidence can be maintained which will be necessary should the request go to more than one force.

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FEES REGULATIONS

LEGISLATION – SECTION 10

(1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a 'fees notice') stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

(2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

(3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State.

(4) Regulations under subsection (3) may, in particular, provide –
(a) that no fee is payable in prescribed cases,
(b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and
(c) That any fee is to be calculated in such manner as may be prescribed by the regulations.

(5) Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

LEGISLATION – SECTION 12

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(10) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) 'the appropriate limit' means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulation provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority -
(a) by one person, or
(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,
The estimated cost of complying with any of the requests is to be taken to be the

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estimated total cost of complying with them all.

(5) The Secretary of State may by regulation make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

LEGISLATION – SECTION 13

(1) A public authority may charge for the communication of any information whose communication-

(a) is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12 (1) and (2), and

(b) is not otherwise required by law, such fee as may be determined by the public authority in accordance with regulations by the Secretary of State.

(2) Regulations under this section may, in particular, provide -

(a) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and

(b) that any fee is to be calculated in such manner as may be prescribed by the regulations.

(3) Subsection (1) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of information.

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ACPO POLICY

DECIDING WHETHER A FEE IS APPROPRIATE

- The Act does not require charges to be made, but the Police Service has discretion to charge applicants a fee in accordance with the fees regulations.
- Any fees charged must be made in accordance with the fees regulations except where fees may be charged under any other Act or Memorandum of Understanding (e.g. Data Protection Act 1998).
- The fees regulations do not apply to material made available under the publication scheme, information that is reasonably accessible by other means or where another Act makes provision for charges for information.

CHARGING A FEE FOR PROCESSING A REQUEST

- Where the receiving force wishes to make a charge, it must provide the applicant with a 'fees notice' stating the amount to be paid.
- A fee may be charged for information that is not required under s1(1) because the cost of compliance exceeds the limit set in the fees regulations.
- If a public authority is making a charge for answering a request, either the marginal cost and/or the cost of disbursements, it has to issue a fees notice to the applicant. The fees notice should be issued in advance of the request being answered, giving an estimate of the costs involved. When an authority issues a fees notice, the applicant has 60 working days to pay. If payment is not forthcoming, the authority does not have to answer the request.
- When a fee is paid, the period from when the fees notice is issued to the receipt of the fees, is disregarded for the purpose of the 20-day compliance time.

ACTUAL VS ESTIMATED COST

- If the actual cost of answering the request is greater than the estimated cost, the authority must bear the additional cost. The FOIA does not allow for authorities to issue another fees notice to cover any additional cost.
- If the actual cost of answering the request is less than the estimated cost charged on the fees notice, the authority should refund the excess money to the applicant. If the actual cost proves to be less than the appropriate limit, then the authority should refund all the money to the applicant, less any disbursements.

WHEN THE COST OF COMPLIANCE EXCEEDS THE LIMIT

- Where a request for information is refused under s12(1) because it exceeds the cost of compliance set by the fees regulations, a notice must be issued within 20 days. (s17(5)). The applicant must also be notified of the internal procedures for dealing with complaints about the handling of requests for information and given details of the right to apply to the Information Commissioner for a decision notice under s50 (s17(7)).
- There is no obligation to explain why the limit has been exceeded.

WHEN A FEE IS NOT RECEIVED

- If the fee is not paid within 60 working days (beginning on the day the fees notice is issued), the force is not obliged to comply with its duty to provide the information.

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CHARGEABLE ITEMS
Where fees are applicable, public authorities will have discretion about whether to charge.

ACPO guidance is that where the statutory cost limit is exceeded, forces should decline to respond to the request under s12 of the Act.

The same rates apply in every case, regardless of whether the request is received from an individual, voluntary organisation, private sector organisation or another public authority.

There are two types of fees that can be charged:

- A fee to cover the **marginal costs** of the request – the cost of finding, sorting, editing or redacting. Fees can only be charged in such situations when the marginal cost exceeds the **appropriate limit**, as defined in the fees regulations.
- A fee to cover the cost of **disbursements**, such as printing, photocopying or postage.

MARGINAL COSTS
Section 13 states that a fee may be charged for requests that exceed the appropriate limit. The current regulatory limit has been set by the Secretary of State and currently stands at £600 for central government and £450 for other public authorities, including local authorities, Police Service, the health service and education.

If it is estimated that the cost of responding to a request would be less than £450, the Police Service is unable to pass on the marginal charge for the request to the applicant.

<u>Standard Hourly Rate</u>
In order to provide a national standard for charging for access to information from UK police forces, it has been decided to recommend that forces consider adopting an approved ACPO standard hourly rate.

This rate currently stands at £25 per hour which equates to 18 hours of work.

This charge will apply regardless of geographical location and who deals with the request.

FEES REGULATIONS
There are two distinct areas in relation to fees contained within the legislation.

The first area is relevant to the initial processing of a request when an authority, when estimating the time taken, can take into account the following four items:

- Determining if the information is held;
- Locating the information;
- Retrieving the information; and
- Extracting the information to be disclosed from the other information*.

* This includes the physical process of redaction but not the time spent identifying the information that needs redacting. This is identified as decision-making time, a part of the decision-making process, and cannot be included in the time estimation.

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Reading time can only be included if the request received is for one document or piece of information contained within 10 box files, for example. In this case, reading time can be counted when a decision maker is trying to determine if the requested information is held amongst other information or contained within a number of documents.

The second area relates to instances where a public authority is charging for a request under s9 and s13 of the FOIA because the initial estimates suggests the cost would exceed the £450 statutory cost limit.

Once established that determining if (i) the information were held (once £450 exceeded) and (ii) locating the information is likely to exceed the cost limit, then an authority is also allowed to include in its cost estimate the cost of communicating information (including the time taken to write the response, summarise and edit the information and the time spent making arrangements for the applicant to view the information).

DISBURSEMENTS

A public authority can charge the applicant the full cost of disbursements (such as photocopying, printing and postage) incurred in responding to an application. Disbursements may include:

- Photocopying or printing material – 10p per sheet;
- Postage – At cost;
- Producing material in an alternative format, such as putting it onto CD-Rom, video, audio cassette or in Braille – At cost; and
- Translating information into a different language at the request of the applicant (not Welsh). If a public authority regularly works in the language requested and has an in-house translation service, it should consider waiving any translation costs.

Staff time associated with these activities is included in the marginal cost.

There is no limit to the amount that a public authority may charge in disbursements.

Authorities can charge for disbursements in all cases, regardless of whether the authority is also charging for the marginal cost of a request. However, in cases where the disbursement cost is low – say, less than £10 – it is up to each force to balance income from disbursements with the cost of raising an invoice.

WHERE COSTS EXCEED THE PRESCRIBED MAXIMUM

Where the cost of the searching and retrieving the information in order to respond to an FOI request exceeds the prescribed maximum, a public authority does not have to comply with a request.

It is a matter for forces to decide what action they will be taking in these instances but it is ACPO policy that requests for information that exceed the statutory cost limit will be rejected under s12 of the Act.

Forces must:

- Discuss with the applicant to refine the question to a more manageable level that would fall within the fees limit or ascertain whether the applicant would like part of the information up to the prescribed maximum.

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Other options include:

- Providing an index or list of information where already available;
- Ascertaining whether the applicant would like a summary or digest of the information request.
- Ascertaining whether the applicant would like to view the information should the cost of providing the information in permanent form be too costly.
- Answering and charging up to the full amount (see ACPO policy).
- Declining to answer the request due to the likely cost of compliance being greater than the appropriate limit.
- Answering and waive the fee

FEES NOTICES

If a force has decided to implement a fees notice, it should issue that notice as soon as practical after the receipt of a request for information, within the maximum 20 days. The fees notice should be sent to the applicant advising them of the fee payable in order to respond the information request. Applicants have 60 working days in which to send the requisite fee.

A fees notice is not to be treated as an official invoice. Freedom of Information Officers will need to refer to their individual force's finance department in order to determine force accounting practices.

Fees are not subject to VAT.

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PROVIDING INFORMATION

LEGISLATION - SECTION 11

(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely -

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant, the public authority shall so far as reasonably practicable give effect to that preference.

(2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by particular means, the public authority may have regard to all the circumstances, including the cost of doing so.

(3) Where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.

(4) Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.

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ACPO POLICY

MEDIUM OF COMMUNICATION

When making a request for information, an applicant may express a preference for the way in which the information is received. This relates to the medium (ie. electronic, hard copy etc) but not the actual format (ie where a table is provided to be completed).

The Police Service must comply with the preference as far as it is reasonably practicable. In determining whether it is reasonably practicable, the Police Service must have regard to all the circumstances, including the cost of doing so.

When it is not reasonably practicable to comply with a preference, the applicant must be notified of the reasons.

Where no preference is specified for the method of communication, the information can be communicated by any means reasonable in the circumstances.

WHERE INFORMATION IS RELEASED

The applicant must be advised, in writing, of:

- The decision;
- Form and manner of access; and
- The applicant's rights to complain, including details of the internal complaints procedure and the Information Commissioner's details.
- Copyright statement.

COPYRIGHT

Generally, the information provided under the FOIA is not subject to copyright. The CRU would not advocate that copyright be attached routinely to responses but should only be included when information falls within normal copyright rules.

It is ACPO's advice that copyright legislation does not override disclosure under the FOIA.

Third party information is not exempt from disclosure because it is copyrighted. When considering disclosure of copyrighted material, FOI officers should focus on the genuine harm that may be cause by disclosure (usually under s41 and s43).

DISCLOSURE LOG

The Disclosure Log on the force's publication scheme should be updated regularly to ensure all disclosures made under FOI are published.

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FOI EXEMPTIONS

SECTION	EXEMPTION	TYPE	TYPE
Section 21	Information reasonably accessible by other means	Absolute	Class-based
Section 22	Information intended for future publication	Qualified	Class-based
Section 23	Information supplied by, or relating to, bodies dealing with security matters	Absolute	Class-based
Section 24	National security	Qualified	Prejudice-based
Section 26	Defence	Qualified	Prejudice-based
Section 27(1) **Section 27(2)**	International relations International relations	Qualified Qualified	Prejudice-based Class-based
Section 28	Relations within the UK	Qualified	Prejudice-based
Section 29	The economy	Qualified	Prejudice-based
Section 30	Investigations and proceedings conducted by the public authority	Qualified	Class-based
Section 31	Law enforcement	Qualified	Prejudice-based
Section 32	Court records	Absolute	Class-based
Section 33	Audit functions	Qualified	Prejudice-based
Section 34	Parliamentary privilege	Absolute	Class-based
Section 35	Formulation of government policy	Qualified	Class-based
Section 36	Prejudice to the effective conduct of public affairs	Qualified	Prejudice-based
Section 37	Communication with Her Majesty etc and honours	Qualified	Class-based
Section 38	Health & safety	Qualified	Prejudice-based
Section 39	Environmental information	Qualified	Class-based
Section 40	Personal information	Absolute	Class-based
Section 41	Information provided in confidence	Absolute	Class-based
Section 42	Legal professional privilege	Qualified	Class-based
Section 43(1)	Commercial interests	Qualified	Class-based
Section 44	Prohibitions on disclosure	Absolute	Class-based

Qualified	Apply public interest test
Prejudice-based	Evidence harm in disclosure

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GENERAL NOTES

CLASS-BASED EXEMPTIONS

Class-based exemptions are exemptions where all information falling into that particular class is exempt from disclosure. All but one of the class-based exemptions are absolute and around half of the qualified exemptions are class-based.

In general terms, under class-based exemptions, disclosure of information is excluded. This is regardless of whether it would be harmful to the public interest or not. Put another way, most class-based exemptions are absolute with an underlying assumption that disclosure of any information falling within a class-based exemption would be damaging.

PREJUDICE-BASED EXEMPTIONS

Where exemptions are prejudice-based, there is an obligation on behalf of the public authority to demonstrate that the disclosure of the information in question would, or would be likely to have, a specified prejudicial effect or identifiable harm. This exemption focuses on identifying the harm that may be caused by release, whether that harm is actual, real or of substance.

Prejudiced-based exemptions come into effect when the disclosure of information would have a specified prejudicial effect (actual, real or of substance). Where there are no prejudicial effects, the information must be released under FOIA.

Public authorities are neither obliged to confirm or deny the existence of information requested, nor communicate the information where specified interests may be prejudiced by confirmation or denial.

QUALIFIED EXEMPTIONS

Qualified exemptions must be considered with reference to the public interest test to determine whether a qualified exemption may be applied.

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THE PUBLIC INTEREST TEST

Qualified exemptions contained in the Freedom of Information Act are subject to the application of the public interest test. Even some of the absolute exemptions have a public interest test incorporated into them.

The exemptions subject to the application of the public interest test are listed in the table below.

SECTION	EXEMPTION
Section 22	Information intended for future publication
Section 24	National security
Section 26	Defence
Section 27(2)	International relations
Section 28	Relations within the UK
Section 29	The economy
Section 30	Investigations and proceedings conducted by the public authority
Section 31	Law enforcement
Section 33	Audit functions
Section 35	Formulation of government policy
Section 37	Communication with Her Majesty etc and honours
Section 38	Health & safety
Section 39	Environmental information
Section 42	Legal professional privilege
Section 43(1)	Commercial interests

The 'public interest' is not defined in the FOIA. However, Decision Notices issued by the Commissioner are helping to evolve the definition.

The public interest refers to:

- Considerations affecting the good order and functioning of community, government and public service affairs; and
- Common benefit to be derived by all members of a community (or a substantial part) and for their benefit.

The public interest does not extend to:

- Matters that the public may be curious about, interested in or amused by; and
- 'Individual right of access' applies only to the extent that disclosure of certain information would be harmful to the wider public interest, or to specific private interests deemed worthy of protection.

Source: Blackstones

Generally speaking, information may be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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APPLYING THE PUBLIC INTEREST TEST

The public interest test should be applied in a manner that is in-keeping with the spirit of the Act.

That is to say there is an assumption that public authorities will provide information requested unless an exemption applies and the public interest favours retention of the information over disclosure. The burden of proof lies with the decision-maker to establish whether there are sufficient grounds to justify an exemption.

The public interest is not what interests the public but what will be of greater good, if released, to the community as a whole.

It is not in the public interest to disclose information that may compromise the force's ability to fulfil its core function of law enforcement.

Information or records requested under FOI should be disclosed unless the structured and reasoned application of an exemption and public interest test considerations favour non-disclosure.

When applying the PIT, the rationale for release and factors favouring disclosure and non-disclosure should always be recorded. This applies equally to the decision to disclose or withheld.

This document should include a record of potential positive outcomes/implications and negative harm that may be derived should the information/record be withheld or released. This will form the basis of any future audit trail and help justify disclosure or non-disclosure in the event of challenges or appeals to the decision. It will also assist the ACPO National Team where mistakes are made by individual forces to ensure that a precedent is not set.

Where there are public interest considerations that favour non-disclosure, the information will be exempt only if those considerations outweigh all public interest considerations favouring disclosure.

The generic headings included in this manual provide a list of factors favouring disclosure/non-disclosure.

Please note that when applying these headings it is essential that the factors are explained and integrated. When explaining the factors listed under the PIT, the actual information requested must be linked to the exemptions used and the harm in disclosure. This will allow the applicant to understand why the particular factor has been used.

In addition, when applying the balancing test, it is important to balance out and consider the major factor favouring disclosure against the major factor favouring non-disclosure.

Any extenuating circumstances must also be noted – for example, where accountability for public funds may have been used as a factor favouring disclosure, the impact of this

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factor may be negated somewhat by the fact that the force's accounts and expenditure patterns are already subject to safeguards in the form of audit.

OVERVIEW

Interpretation of the 'public interest test' is likely to be dynamic and evolve over time, especially as disclosure of information will be assessed on an individual, case-by-case basis. The Information Commissioner's decisions on appeals and challenges to decisions taken to withhold information under the PIT will also clarify what constitutes the public interest over the longer term.

Of the 23 exemptions identified by the Act, 10 require evidence of prejudice (harm) to be identified when they are engaged, 8 in full and 2 in part.

The exemptions that require evidence of prejudice are labelled as 'prejudice-based' exemptions and these are

Section 24	National security
Section 26	Defence
Section 27(1)	International relations
Section 28	Relations within the UK
Section 29	The economy
Section 31	Law enforcement
Section 33	Audit functions
Section 36	Prejudice to the effective conduct of public affairs
Section 38	Health and safety
Section 43(2)	Commercial interests

Those that do not require harm in disclosure to be evidences are called 'class-based'.

In addition to these titles, exemptions are also referred to as 'absolute' and 'qualified'. 'Qualified' exemptions require the application of a public interest test (PIT) before any decision on disclosure can be made.

The following exemptions are qualified so are subject to the application of the public interest test:

Section 22	Information intended for future publication
Section 24	National security
Section 26	Defence
Section 27	International relations
Section 28	Relations within the UK
Section 29	The economy
Section 30	Investigations and proceedings by public authorities
Section 31	Law enforcement
Section 33	Audit functions
Section 35	Formulation of Government policy and other governmental interests
Section 36	Prejudice to the effective conduct of public affairs
Section 37	Communication with the Royal Family and honours
Section 38	Health and safety

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Section 39	Environmental information
Section 40	Personal information
Section 42	Legal professional privilege
Section 43	Commercial interests

EVIDENCE OF HARM

It is considered best practice to identify any harm in disclosure regardless of the legal requirements to communicate this to an applicant. (Please refer to the section of the decision making process for further information and guidance).

HARM is the word ACPO advocates using when identifying prejudice in relation to a disclosure. The Act itself gives no guidance on the meaning of 'prejudice'. However, the ICO takes the view in published awareness guidance that 'prejudice' means 'harm' or 'damage'.

ACPO's definition of harm itself, in a policing context, means the undesired consequence of the disclosure of information which will or could lead to the physical or mental harm of a person, damage to property, loss of public confidence or a reduction in the effective provision of public service delivery. In all cases, this can be temporary or permanent.

In addition to the identification of actual harm, practitioners will also need to consider occasions when disclosure is 'likely to prejudice' or cause harm. Again this is not defined in the Act but the considerations of the courts in the context of the Data Protection Act, in the case of Lord v Secretary of State for the Home Department, are relevant. Here the term 'likely to prejudice' was considered and it was agreed that this is the indicator of the degree of probability that harm or damage may take place. This probability needs to be very significant and Decision Notices and tribunal decisions have mirrored this by stating that evidence needs to be 'more than mere speculation'.

Decision-makers are encouraged to ensure that the evidence they produce meets or exceeds the above standards. Actual examples are far more effective than anecdotal comparisons. Regardless of whether there is a legal requirement to communicate harm to the applicant (prejudice-based exemptions) once identified, it is good practice to ensure that any harm should be recorded as part of the decision-making process.

When collecting evidence of harm, in order of priority, the following should be considered:

- Individuals
- Community
- Service
- Other bodies

It is unlikely that decision-makers will be experts in the relevant business area of the information requested. It is imperative that any stakeholders in disclosure are consulted, especially third parties that may be outside the organisation. These are not always the information author or owner. For example, a request for statistical data on a local youth

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crime project should not limit consultation to the producers of the statistics, but also those responsible for policing in that area and those engaged on the project, which may include the local council. These parties would be much more aware of the issues in disclosure than the data compilers and are likely to be able to provide much more accurate comment on harm.

This is further endorsed by the Lord Chancellor's Code of Practice which stipulates consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by disclosure.

PUBLIC INTEREST TEST

As already outlined, a public interest test is required when qualified exemptions are engaged. This test is vitally important as it has the potential to overcome the most extreme prejudice in disclosure. The completion of an effective PIT is probably the most challenging and skilful area of decision-making. It should only be undertaken by those with knowledge of the legislation, or the assistance of such a person.

It can be challenging, not only because it can become subjective, relying on the emotions and mindset of the individual, but also because it may have to be undertaken in a contaminated environment. This contamination can stem from prescriptive instructions regarding disclosure or an attempt to complete the PIT after a decision has already been made. There is a severe risk that writing a PIT in order to justify a decision will lead to a biased, unbalanced test which could appear as such to the recipient and ultimately, to the ICO. This, in turn, could lead to an enforced adverse disclosure and ultimately expensive appeals and tribunals.

The temptation to make a decision prior to the completion of the PIT should be robustly opposed if information is to be effectively protected when there is a need to do so.

There is no definition of the 'public interest' contained within the Freedom of Information Act. Instead, the concept is taken from case law and other UK legislation. The most important reference at this time is the Tribunal case of The Guardian Newspaper v The ICO and the Avon and Somerset Constabulary.

What was established is that the 'public interest' is **not** what the public finds interesting but what would be of tangible benefit to the public as a whole. This benefit then has to be weighed against the potential harm that may be caused in disclosure; this is achieved by conducting a 'balance test'.

This concept brings us back to the subjective nature of the PIT. It is for decision-makers to decide what is actually for the good of the community. This is not a responsibility to be taken lightly, especially as this can later face stringent challenges from applicants, the media and the ICO or information tribunal. It is for these reasons that decision-makers and internal reviewers must be appropriately experienced, trained and have the authority to disclose or withhold information when it is appropriate to do so. Experience has taught us that not only will each authority be held accountable but also those individuals who make decisions.

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Information may only be withheld under the public interest test if the public interest in maintaining the exemption genuinely outweighs the public interest in disclosing the information. The burden of proof lies with the decision-maker who must record all the issues that have been considered, regardless of whether the information is ultimately refused or released.

In order to establish some corporacy in the PIT, which leads to more effective and consistent decision-making, ACPO advocates that the following process is followed.

Using the headings and descriptors, all the factors **favouring disclosure** must be recorded. If a heading is relevant, it will form the basis of the debate and it must be made case-specific. **Simply cutting and pasting the descriptor is not sufficient.**

For example, a request has been received asking for copies of the force's procedure for investigating rape offences. The first consideration identified was 'Accountability' and it would look something similar to:

Accountability
Disclosure of this procedure will show how officers carry out the investigation into a serious offence. It shows why certain actions are taken and how an effective investigation should be conducted. Disclosure of the information will show that the force not only has an effective process, but that it is fair, unbiased and fit for purpose.

Ultimately it may transpire that the same factors for disclosure then cross over into other headings. It is not vital that all the headings are used as long as the arguments are still articulated.

After this exercise has been completed, it should then be repeated for the factors **favouring non-disclosure.**

It is only then that a balance test between the competing factors should be undertaken.

BALANCING TEST

Once all the rationale has been recorded a balance test on the competing issues needs to be conducted. As the name suggests, this test involves analysing the competing arguments by almost figuratively placing them on a scales and seeing which way they tip. This is not achieved by weight of numbers i.e. three factors favour disclosure and two do not, but by comparing the most persuasive arguments on each side and deciding which is the most weighty. This requires a high degree of skill on the part of the decision-maker, especially when balance is finely poised.

For example a public interest test on the disclosure of a policing tactic may have, in addition to others, 'effective and efficient conduct of the force' as the most powerful argument for non-disclosure which will be opposed by 'Accountability' as the most persuasive rationale on the disclosure side. If the accountability factors show high levels

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of community benefit then it is likely that this will then tip the balance in favour of disclosure.

If a decision cannot be made purely on the factors identified as the most important then the factors with lesser impact should one by one be added to the 'scales' until the PIT can be resolved.

In addition to the PIT rationale the balance test will also need to be recorded and if information is refused, communicated to the applicant.

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CONSIDERATIONS FAVOURING DISCLOSURE

ACCOUNTABILITY	When information disclosed relates directly to the efficiency and effectiveness of the force or its officers. The purpose of the Act is to make public authorities more accountable and this factor, therefore, may be applied to a wide range of scenarios, from how an individual or the force fulfils their role or function, to policy decisions that have been taken in relation to investigations or general policy issues.
HUMAN RIGHTS, MORALS AND ETHICS	The public interest may be served by providing information because in the particular circumstances, it is simply the right thing to do. This can be because of obligations placed on an authority under the European Convention on Human Rights or because it is fair and reasonable to do so. This is especially true if the provision of information about an individual would reduce the risk of harm befalling them. For example, disclosure of an officer's expenses which show that publicly made allegations of inappropriate behaviour are in fact false.
IMPROPER ACTIONS OF PUBLIC OFFICIALS	If information shows that public officials have made poor decisions or abused their office, then the public should be provided with the facts. Embarrassment is not a valid reason for non-disclosure.
PUBLIC AWARENESS AND DEBATE	Where disclosure can assist individuals by raising awareness of issues which may be of relevance to them. This could empower them to make more effective decisions about their own activities or contribute to more accurate public debate. Some examples would include being able to avoid a particular area where there is a crime issue or taking steps to be more vigilant in a heightened terrorist alert. Similarly, accurate public debate which corrects rumour, speculation and falsehoods could remove the need to take unnecessary actions, reduce the fear of crime and improve the quality of life.
PUBLIC PARTICIPATION	Where the service would benefit from public participation and the input of the community at large, this would favour disclosure. This can range from a need for the public's assistance in crime prevention and detection to debate with regard to policy and decision-making. This is particularly relevant when these policies may not only have an impact on the wider community but also minority and vulnerable groups.
PUBLIC SAFETY	There may be occasions when it is appropriate to disclose information that would have an impact on public safety, such as emergency contingency plans. This may be applied where the public would benefit from having enhanced knowledge and would therefore be able to take the necessary precautionary steps to protect themselves.
RESEARCH	In appropriate cases, providing information may assist in research that could benefit the community or the police service. The fact that this research is actually taking place must be verified. It must also be established exactly what benefits will be derived from it and an assessment made of how useful they may be. For example an official university sponsored project is more likely to deliver benefits to the community rather than an individual pursuing a speculative theory.
USE OF PUBLIC FUNDS/RESOURCES	Where public funds are being spent, there is a public interest in accountability and justification. This is another factor that has wide-ranging application to numerous scenarios as one of the underlying principles of the Act is the need for authorities to be more open and transparent.

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CONSIDERATIONS FAVOURING NON-DISCLOSURE

EFFICIENT AND EFFECTIVE CONDUCT OF THE SERVICE/A FORCE	Where the current or future law enforcement role of the force may be compromised by the release of information. This is a very wide-ranging factor and when applied, evidence should be provided to demonstrate the impact.
EXISTING PROCEDURES	It would not be in the public interest for Freedom of Information to be used to obtain information which can more effectively obtained under existing procedures, especially if to do so would undermine those procedures. For example, the provision of accident reports for a fee is an income generator and to remove that option would have a detrimental impact to the force and ultimately the public.
FLOW OF INFORMATION TO THE SERVICE OR A FORCE	Where releasing information would act as a deterrent to the public to provide information to the force. With this relationship impeded, it would be more difficult for the force to gather information required to perform its public service functions. An example of this would be the need to protect the flow of information from informants and the public having confidence that their information will be treated sensitively and appropriately.
HUMAN RIGHTS, MORALS AND ETHICS	The public interest will not be served if disclosure breaches the obligations placed on an authority under the European Convention on Human Rights, particularly the right to life, fair trial and privacy. It may also simply be unfair or morally wrong to provide certain information. For example when a trial has already taken place resulting in an acquittal and a disclosure would fuel or encourage a further 'trial by media'. Sometimes, protecting information is simply the 'right' thing to do.
INTERESTS OF THIRD PARTIES	Where individuals or third party interests might be jeopardised by release of information that relates to personal affairs of individuals and/or sensitive commercial information held about business, financial, contractual or operational issues. This can include reputations. Data Protection issues must also be considered.
INVESTIGATIONS	It is rare that details of an investigation will be disclosed as to do so will invariably release personal information, law enforcement techniques and in the case of uncompleted cases potentially damage the criminal justice process. These factors however become less impactive with the passage of time and the provision of information officially released to the public through such channels as force media departments and SIO media interviews.
PUBLIC SAFETY	There may be occasions where the release of information relating to public safety may not be in the public interest. Public safety is of paramount importance to the policing purpose and must be considered in respect of every release.
TIMING OF REQUEST	In certain circumstances, such as requests relating to commercial contracts, the timing of the request may create a public interest against disclosure. If the request is received before the tendering process has been completed, it is envisaged that an exemption under section 43 could be maintained at that time. However, it should be made clear to the applicant that a different decision may be reached if the request were to be resubmitted upon completion of the tendering process.
TORTUOUS DUTY	In circumstances where the service/force is under a legal obligation to maintain confidences, it would not be in the public interest to release the information if the grounds for this duty can be shown to be valid and it could leave the force vulnerable to civil proceedings.

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CONSIDERATIONS THAT ARE INVALID

In addition, there are a number of criteria that may not be considered as part of the public interest test or may be applied only in limited circumstances:

EMBARRASSMENT	Potential embarrassment to the force, Police Service or an individual officer on release of information is not a valid public interest consideration in favour of non-disclosure.
HIGH PUBLIC OFFICE	Where the subject of the information, the giver or the recipient of the information holds high office, this is not in itself sufficient to weigh against disclosure. An assessment of the consequences of the disclosure of the particular issue is required.
POLICY DEVELOPMENT	Even where information relates to policy development, this does not establish a public interest consideration favouring non-disclosure. Even if policy is under review, it still may be in the public interest to release.
CANDOUR AND FRANKNESS	Claims that disclosure would prejudice the supply of frank and candid information in the future can only be considered where there is a very particular factual basis to support this view. The possibility of future publicity through disclosure may deter immediate release and should provide an incentive to improve the quality of the information/record prior to disclosure.
DISCLOSURE OF CONFUSING OR MISLEADING INFORMATION	In most cases, the force would have a means of avoiding such a prejudicial effect by releasing new or revised information to rectify any inaccuracies or clarify the situation. If a certain course of action has not been considered and should have been, this is not enough to withhold.
INFORMATION/RECORDS HELD DO NOT FAIRLY REFLECT THE REASONS FOR A DECISION	Where this occurs, the force would have the opportunity to provide additional information that accurately explains the reason for the decision.
DRAFT DOCUMENTS	There may be benefits of public access to draft material, to further the accountability and public planning process. Draft documents may therefore be disclosed. Disclosure of this kind allows members of the public to examine the process by which a decision has been reached, thus serving the public interest.
GOVERNMENT PROTECTIVE MARKING SCHEME (GPMS)	The marking of material under the GPMS will not, in itself, be valid grounds for withholding information. GPMS indicates how a document should be transported, handled and stored. The content of the material should be examined and the relevant exemptions applied only after discussion with the data owner and other relevant parties. Time elapsed since the document was marked under GPMS may also be a factor in any decision to release or withhold.

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SECTION 21
INFORMATION REASONABLY ACCESSIBLE BY OTHER MEANS

LEGISLATION

(1) Information which is reasonably accessible to the applicant otherwise than under s1 is exempt information.

(2) For the purposes of subsection (1)-
(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

EXEMPTION TYPE: Absolute
Class-Based

ACPO POLICY

When using this exemption, the applicant must be provided with details of where the information may be obtained from. The provision of information under the FOIA is generally free of charge (apart from what's allowable in the Fees Regulations). However, it is permissible to cite this exemption when the information is normally provided for a fee. For example, road traffic accident/collision reports.

A public authority **must clearly indicate** on its publication scheme if it is making a charge for the supply of information. It may be appropriate to include on the publication scheme a list of documents and other information that is available for a fee.

This exemption may be applied if the information requested is publicly available on a website (not just the force's own website) or in the publication of another individual, organisation or publisher.

To apply this exemption, information must be physically and geographically accessible to

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the applicant. If it is available in one location only and there is a requirement to source the information in person, this may not be considered 'reasonably' accessible.

Charges for information may be made where:

- Information is already provided for a fee under a statutory scheme; and
- The information is already published as part of the authority's publication scheme and a charge has already been indicated for the class of information in question.

The publication scheme must specify the format in which information is published. Information provided in electronic format should be offered as a hard copy alternative for those applicants without reasonable access to the Internet.

Where a public authority has a legal obligation to publish certain types of information, this too should be considered reasonably accessible, even though it may not appear on, or be described in, the publication scheme. This applies if the information requested is available by virtue of the legal obligations of another public authority to publish.

The exception is information that is available only on inspection, by visiting a specific location for example. In this case, the information is not considered to be reasonably accessible even though the authority has a legal obligation to publish it (unless it falls within a class of information that is included on the authority's publication scheme).

Information that is normally made available in inspection is not 'reasonably accessible' if:

- The applicant lives a considerable distance away;
- The applicant has mobility problems; or
- There are other factors that may influence an applicant's ability to view the information.

In these cases, the authority may consider providing a hard copy of the information – though this does not mean it is obliged to every time.

The authority is under no obligation to translate information that is released in response to a request into other languages. It may, however, be reasonable for the authority to translate the original request and then consider translation on a case-by-case basis.

Where an applicant has a disability or may require the information requested in an alternative form – such as in Braille or an audio-tape – the onus is on the authority to consider providing it in the format requested if it is 'reasonably whom the information is reasonably accessible, they may fall foul of other statutory duties laid down by the Welsh Language Act 1993, the Race Relations Amendment Act 2000 and the Disability Discrimination Act 1995.

Public authorities may also have their own internal policies that commit them to delivering a certain level of service for members of the non-English speaking community. It is important that members of staff responsible for dealing with FOI requests are aware of existing policies regarding access to information for those with physical disabilities or for non-English speakers.

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When a special case is put to the authority for information published, where disability or other difficulties result in problems in accessing the information (such as lack of Internet access), then it will be left to the individual force to decide on how best to provide the applicant with the information requested.

ADDITIONAL GUIDANCE
When considering the application of this exemption (and also s40), FOI Officers can take into account the identity of the applicant. For example, s21 may be used where the applicant is an employee of the organisation and is able to access information on the force's Intranet.

Section 21 can only be relied upon under CPIA if the information has already been provided under CPIA and not on speculation that it may be provided under CPIA.

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SECTION 22
INFORMATION INTENDED FOR FUTURE PUBLICATION

LEGISLATION

(1) Information is exempt information if –

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time the request for information was made, and

(c) it is reasonable in all circumstances that the information should be withheld from disclosure until the date referred to in paragraph.

(2) The duty to confirm or deny is excluded where compliance with that duty would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

EXEMPTION TYPE: Qualified
Class-based

APPLY: Public interest test

ACPO POLICY

Section 22 may be engaged when there is an intention to publish the information requested at the time of receipt. Without this intention, s22 may not be used and authorities may not take the decision to publish the information **after** the request for information is received. No actual publication date is required for s22 to be engaged. However, the Act states that the publication date set must be 'reasonable'. Where the date for publication has still to be determined, s22(1)(c) may only be cited where it is reasonable to postpone publication until an unspecified date.

Section 22 may only be cited where the information that is intended for publication is exactly what has been requested by the applicant.

This exemption is concerned with the **timing** of the release of information. It is not concerned with the suitability of the **content** for release. The decision to publish must have already been made at the time the request is received, subject to possible amendments.

This exemption also covers information that another authority or person (individual or organisation) intends to publish. One public authority, for example, may have been given a draft or document that another intends to publish. The exemption may also be

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cited if an alternative body, other than the one to which the application was originally made, is planning to publish the information requested.

Where a request for information is directed at information that falls within a class defined in the authority's publication scheme, it may be assumed that the information is intended for publication, even if it has not already been published. Thus, the decision becomes one relating to timing rather than disclosing or withholding the information. The authority must consider whether it is in the public interest to release information earlier than originally planned. Whilst authorities may wish to wait until one set of meeting minutes is approved at a subsequent meeting prior to releasing them to the public, it should recognise the public interest in providing draft minutes to applicants who may either wish to attend or have an input into the subsequent meeting.

If there is already an intention to publish requested information, it is generally the case that the sooner the intended date of publication, the stronger the case for applying exemption.

Even if the information is in a draft form and may be amended or omitted prior to the final version being agreed, this exemption still applies. Whilst the words may differ from draft to final document, the information imparted probably will not. Where the information exists in draft or rough form only or if it forms a part of a larger body of work or information, it may be more difficult to apply s22.

Reasons such as political embarrassment and administrative inefficiency may not be used as reasons to delay publication.

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SECTION 23
INFORMATION SUPPLIED BY, OR CONCERNING, CERTAIN SECURITY BODIES

LEGISLATIVE REQUIREMENTS

(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to s60, be conclusive evidence of that fact.

(3) The bodies referred to in subsections (1) and (2) are—
- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters (GCHQ),
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the Serious and Organised Crime Agency (SOCA) including CEOP.

(4) In subsection (3)(c) 'the Government Communications Headquarters' includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with s1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

EXEMPTION TYPE: Absolute
Class-based

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SECTION 24
NATIONAL SECURITY

LEGISLATIVE REQUIREMENTS

(1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

(3) A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to s60, be conclusive evidence of that fact.

(4) A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

EXEMPTION TYPE: Qualified
Prejudice-based

APPLY: Evidence of harm
Public interest test

THIS IS A MANDATORY REFERRAL TO THE CRU

ACPO POLICY

Sections 23 and 24 are often very closely linked.

A s23 exemption is applicable to information received from or related to a number of bodies specifically listed in the Act. The s24 exemption is applicable to information, the non-disclosure of which is necessary to safeguard national security.

In certain circumstances, it will be necessary to use the two exemptions together. In other circumstances the two exemptions are mutually exclusive and cannot be used jointly. It is ACPO policy that the data owner must always be consulted when a s23 or s24 exemption is considered. This procedure must be followed whether the data is held or, if not, would likely have come from a s23 body.

CONSULTATION
Due to the sensitivities of these exemptions it is <u>MANDATORY</u> that responses considering or likely to engage these exemptions are referred to the ACPO Central Referral Unit

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The Central Referral Unit Manager will engage the broader consultation procedures which must be undertaken under nationally agreed partnership protocols.

MINISTERIAL CERTIFICATES

Occasionally at the point of an ICO appeal or Information Tribunal (IT), it may be necessary to consider the use of a 'ministerial certificate' for s23 and s24 exemptions. The effect of a certificate, signed by a Minister of the Crown, is to provide conclusive evidence that an exemption is engaged and avoid the need for the ICO or IT to make judgement on information with which they have no experience. It should be noted that for s24 exemptions the use of a certificate does not provide the public interest balance on non-disclosure only that the exemption applies. Responsibility for the PIT balance is maintained by the ICO. That said, there are unlikely to be circumstances that support the release of information that could jeopardise national security.

Either the Information Commissioner or the applicant can appeal against the certificate, to the National Security Appeals Panel of the Information Tribunal (NSAP).

This is a complex and highly sensitive process and will be led by the CRU in close consultation with the Ministry of Justice (MOJ) and relevant stakeholder agencies.

GENERAL POINTS

Information Supplied by, or Relating to Exempt Security Bodies

This absolute exemption covers **any** information supplied by or relating to an exempt body. Within the policing environment this is likely to be information from or linked to SOCA and the Security Services, though broad consideration of all exempt bodies is necessary when considering complex requests. Though there is no specific definition of 'relates to' within the legislation, FOI practitioners are required to adopt a cautious approach when assessing these facts.

Information Covered by this Exemption

As the security bodies are not 'public authorities' for the purposes of the Act, they are not under any duty themselves to disclose information. It is only information supplied by them to departments, or information that relates to them and held by departments, that needs to be, and is, addressed by s23.

Insofar as the exemption relates to the source, rather than the content of the information, it is not possible to give an indicative list of the types of information that may be covered by s23. Insofar as the application of the exemption turns on whether information 'relates' to the security bodies, it will be capable of covering a range of subject matter of a policy, operational or administrative nature.

Considerations

The Act does not specify how remote from the original source information needs to be before it is no longer to be regarded as 'directly' or 'indirectly supplied' by, or that it relates to, one of the security bodies. However, if it is possible to trace a discrete piece of information back through each transmission to its original source, then this would seem to be sufficient, however many hands it has passed through and even if its wording has changed along the way.

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In line with core NCND principles decision-makers should bear in mind that acknowledging that no information supplied by or relating to any of the security bodies is held may in itself constitute information about one of the security bodies, and that in some circumstances it may be appropriate to apply the 'neither confirm nor deny' provisions under s23(5) and/or s24(2), even when no information is held.

While there is no right of access under the FOIA to information supplied by or relating to the security bodies it may still be possible to disclose information, quite separately from the Act, if disclosure is officially authorised. However, it remains important that the disclosure of any information that could be covered by s23 (including historical records) takes into account other relevant legal considerations, and that the decision is taken after consultation with the respective legal and security experts.

NATIONAL SECURITY

The test to be applied when considering whether to claim a s24 exemption is not whether the information relates to national security but whether the exemption is required for the purpose of safeguarding national security. That is, to claim the exemption it must be possible to identify an undesirable effect on national security, or the risk of such an undesirable effect, that claiming the exemption would prevent.

This exemption applies to information not covered by s23, though it may on occasion be necessary to use both exemptions together.

It will be essential to consider circumstances where actual harm has, or will, occur to national security; the need to prevent harm occurring; to avoid the risk of harm occurring; and whether the requested information could cause damage if put together with other available information.

Taken together, the following statements on national security may form the basis for identifying the type of information which falls into this category.

- The security of the nation includes its well being and the protection of its defence and foreign policy interests, as well as its survival;
- The nation does not refer only to the territory of the UK, but includes its citizens, wherever they may be, or its assets wherever they may be, as well as the UK's system of government;
- Potential threats to, or otherwise being relevant to, the safety or well-being of the nation, including terrorism, espionage, subversion, the pursuit of the Government's defence and foreign policies, and the economic well-being of the United Kingdom.
- Other areas may include the proliferation of weapons of mass destruction and the protection of the Critical National Infrastructure, such as the water supply or national grid, from actions intended to cause catastrophic damage.

NCND EXISTENCE OF INFORMATION

Full guidance on the Neither Confirm Nor Deny principles can be found within this manual. Careful consideration is required when assessing the need to confirm or deny matters exempt by way of s23 and s24 individually or combined.

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Where responses are considered for information relating to exempt bodies or national security purposes, in most cases it will be necessary to assess adopting an NCND approach: s23(5) and/or s24(2). The duty to confirm or deny does not arise if to comply would itself disclose information, which is exempt under the Act. The use of s23 and s24 together may be the only way that the 'non-committal' response that NCND requires in order to work, may be maintained. So that it cannot be readily inferred that use of the two exceptions together is itself an indicator of the relevant security body activity, it is also important that where s24 is relied on, reciprocal consideration is given to the justification for relying on s23.

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SECTION 26
DEFENCE

LEGISLATION

(1) Information is exempt information if its disclosure under this Act would, or would be likely to prejudice –

(a) the defence of the British Islands or of any colony, or

(b) the capability, effectiveness or security of any relevant forces.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection 1.

EXEMPTION TYPE: Qualified
Prejudice-based

APPLY: Evidence of harm
Public interest test

ACPO POLICY

The term 'co-operation' may include:

- Working with the UK's forces on a particular project or to include a much wider range of 'friendly' forces; and
- Information about the capabilities and vulnerabilities of forces working with UK forces.

The effect of disclosing information on the relationship between the UK and any other state should also be considered as a relevant factor in the public interest test when applying this exemption.

There is no current ACPO interpretation of this exemption and ACPO feels this exemption will have limited application within the Police Service.

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SECTION 27
INTERNATIONAL RELATIONS

LEGISLATION

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice -
(a) relations between the United Kingdom and any other State,
(b) relations between the United Kingdom and any international organisation or international court,
(c) the interests in the United Kingdom abroad, or
(d) the promotion or protection by the United Kingdom of its interests abroad.

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

(4) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)—
(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
(b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

EXEMPTION TYPE: s27(1)
Qualified
Prejudice-based
s27(2)
Qualified
Class-based

ACPO POLICY

Section 27(1) is prejudice-based and covers disclosures that would, or would be likely to, prejudice international relations.

This is a broad exemption that is designed to cover the 'interests of the United Kingdom abroad' and 'the promotion or protection by the United Kingdom of its interests abroad'.

The exemption, however, does not cover the interests of specific groups within the state. Rather, this provision is designed to protect general national interests.

This exemption is class-based and covers information received in confidence from other states and international bodies.

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The duty to confirm or deny the existence of information is also excluded to the extent that compliance with that duty would:

> *'involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.'*

Since s27(2) is class-based, there is no need for a public authority to establish the specific prejudice that would occur from disclosure.

There is some overlap between s27(2) and s41 (Information in confidence). However, s41 applies to the disclosure of information obtained from another person whilst s27(2) refers to information obtained from a state, organisation or court that:

- Is confidential at any time while the terms on which it was obtained require it to be held in confidence; or
- While the circumstances in which it was obtained make it reasonable for the state, organisation or court to expect that it will be so held.

This provision is therefore concerned with the conditions under which the information was obtained.

It is ACPO's view that this exemption will be used in limited circumstances and with particular reference to forces with international responsibilities or in respect of forces that have relationships with forces overseas.

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SECTION 28
RELATIONS WITHIN UK

LEGISLATION

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration.

(2) In subsection (1) 'administration in the United Kingdom' means –
(a) the government of the United Kingdom
(b) the Scottish Administration
(c) the Executive Committee of the Northern Ireland Assembly
(d) the National Assembly for Wales

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

EXEMPTION TYPE: Qualified
Prejudice-based

APPLY: Evidence of harm
Public interest test

ACPO POLICY

This exemption was included in the Act to protect relations between the devolved administrations of the UK.

Where the release of information would compromise these relations, this exemption may be applied.

In contrast to s27 (International relations), there is no specific class-based exemption covering information received in confidence from another administration in the UK.

It is ACPO's view that this exemption will have very limited relevance to the Police Service.

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SECTION 29
THE ECONOMY

LEGISLATION

(1) Information is exempt information if its disclosure under this Act would, or would be likely to prejudice –

(a) the economic interest of the United Kingdom or of any part of the United Kingdom

(b) the financial interests of any administration in the United Kingdom, as defined by section 28(2)

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

EXEMPTION TYPE: Qualified
Prejudice-based

APPLY: Evidence of harm
Public interest test

ACPO POLICY

Categories of information that might fall within this exemption may include premature disclosure of governmental intentions relating to taxation or to the disposal of substantial property holdings owned by the state that would be likely to lead to the prejudice of the short-term economic interests of the UK. This exemption may also be used for information that would, if released, prejudice the economics of a region, in terms of inward investment for example.

It may be more difficult, however, for public authorities to prove that disclosure would cause prejudice in the longer term.
http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

http://www.dca.gov.uk/foi/guidance/exsumm/index.htm

ACPO policy in respect of this exemption is awaited. It is believed that s29 will not be a key exemption for the Police Service

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SECTION 30
INVESTIGATIONS AND PROCEEDINGS CONDUCTED BY PUBLIC AUTHORITIES

LEGISLATION

(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of -

(a) Any investigation which the public authority has a duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence, or (ii) whether a person charged with an offence is guilty of it,

(b) Any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority had the power to conduct, or

(c) Any criminal proceedings, which the authority has the power to conduct.

(2) Information held by a public authority is exempt if –

(a) it was obtained or recorded by the authority for the purpose of its functions relating to –

- (i) Investigations falling within subsection (1)(a) or (b),
- (ii) Criminal proceedings which the authority has the power to conduct,
- (iii) Investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
- (iv) Civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

EXEMPTION TYPE: Qualified
Class-based

APPLY: Public interest test

ACPO POLICY

Section 30 creates an exemption for information:

- Which is or has been held for the purposes of a criminal investigation;
- Which is or has been held for criminal proceedings conducted by a public authority; or
- Which was obtained or recorded for various investigative functions from confidential sources and relates to those confidential sources.

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Information covered by this exemption is subject to the 30 year rule, running from the date the last papers were added. This can be nothing more than an annotation on the front cover to say the file has been reviewed.

The first part of the exemption covers particular criminal investigations and proceedings and the second part provides protection to information about confidential sources on a wider range of investigative functions as listed under s30(2).

This exemption covers information held at **any time** for the purposes of an investigation, whether the case is ongoing closed or abandoned.

It is ACPO's view that information relating to ongoing investigations is unlikely to ever be released under FOIA, nor that relating to confidential sources. The disclosure issues with regard to sources are well known (CHIS), but less so investigations themselves. To disclose ongoing investigations would risk undermining the human rights of any suspect to a fair trial and more importantly the rights of the victim, if a prosecution were to fail due to an adverse disclosure. There are already in place established procedures for disclosure when to do so would aid an investigation, for example an appeal for witnesses through media channels. FOIA is not the correct discipline to use for such matters.

RELATIONSHIP WITH S31

There are areas of overlap between s30 and s31. Whereas s30 provides an exemption in relation to a particular criminal investigation, s31 provides for general steps taken in relation to law enforcement.

It is clear within s31 itself that where s30 applies s31 cannot be used. This should be borne in mind when analysing investigation material subject to a request. All the information may not be covered by s30 as there needs to be a link between the information and the investigation. For example, a crime file may contain a policy or procedural reminder on its completion and this would not be information held for the purposes of a specific investigation, therefore engaging s31 instead, if the disclosure would prejudice law enforcement.

ATTRACTION OF NCND WHEN S30 IS ENGAGED

There is an option within s30 to Neither Confirm Nor Deny the information is held (see NCND chapter).

The success of many investigations depends on ensuring the information is not disclosed prematurely. It is likely that a non-committal response will be required when the existence of an investigation is not yet in the public domain or it is a necessary response to protect the identity of some informants or defendants.

For example a request stating 'please disclose copies of the investigation into Smith' whether held or not is likely to attract an NCND response, unless such an investigation is already public knowledge. To use exemptions or state 'not held' could actually disclose sensitive and personal information.

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THE PUBLIC INTEREST TEST

Section 30 is a qualified exemption. This of course means that even if the information requested is exempt, the public interest in maintaining the exemption may be outweighed by a wider public benefit in disclosure.

A critical issue is likely to be the timing of the disclosure. Factors favouring disclosure are likely to be weaker while an investigation is being carried out, or is unsolved and subject to Criminal Procedures and Investigations Act (CPIA) review, for the reasons outlined above. However, once an investigation is completed, the public interest in understanding why an investigation reached a particular conclusion, or in seeing that the investigation has been properly carried out, could well outweigh the public interest in maintaining the exemption.

This will still be relative to the factors outlined in the public interest chapter; however, the ICO has outlined his view that cases where justice was not done, either to the accused person or victim, may shift the public interest towards disclosure. This is especially so in cases where procedural failure or mismanagement is the cause.

In any case, investigations are also likely to attract other exemptions, and a PIT favouring disclosure may still require the removal of other information for example personal information and/or information from exempt bodies.

CASE-BY-CASE

An important element when dealing with requests for investigations is the requirement to deal with each request on a case-by-case basis. Also, there is a need for each piece of information to be assessed. Simply applying a 'blanket' exemption because the information requested is an investigation, is not valid. Decision Notices and tribunal cases have shown that this is flawed because the PIT may well be different for each piece of information. For example a benign note on the file discussing charging options will have different considerations to a sensitive witness statement. The most cost and time effective method to do this will be to establish exactly what information the applicant really wants, potentially removing the need to analyse each separate piece.

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SECTION 31
LAW ENFORCEMENT

LEGISLATION

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice -

(a) the prevention or detection of crime

(b) the apprehension or prosecution of offenders

(c) the administration of justice

(d) the assessment or collection of any tax or duty or any imposition of a similar nature

(e) the operation of immigration controls

(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

(h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf pf the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or

(i) any enquiry held under the Fatal Accidents ands Sudden Death Inquiries (Scotland) Act 1976.

(2) The purposes referred to in subsection (1)(g) to (i) are-

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,

(e) the purpose of ascertaining the cause of an accident,

(f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,

(g) the purpose of protecting the property of charities from loss or misapplication,

(h) the purpose of recovering the property of charities,

(i) the purpose of securing the health, safety and welfare of persons at work, and

(j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

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EXEMPTION TYPE:	Qualified Prejudice-based
APPLY:	Evidence of harm Public interest test

ACPO POLICY

Section 31 creates an exemption from the right to disclose information if releasing it would, or would be likely to cause **significant** harm to the functions of a public authority.

Public authorities may engage this exemption **firstly either** in relation to certain 'activities' listed under sections (1)(a) to (f), of the exemption which are:

(a) The prevention and detection of crime.
(b) The apprehension or prosecution of offenders.
(c) The administration of justice.
(d) The assessment or collection of tax.
(e) The operation of immigration controls.
(f) The maintenance of security and good order in prisons.

or secondly carrying out a 'specified purpose', sections (1)(g) to (i) as outlined in section 31(2):

- Determining whether a person has broken the law;
- Determining whether a person is responsible for improper conduct;
- Determining whether there are or may be circumstances which would justify regulatory action;
- Determining a person's fitness or competence to manage a corporate body or to continue in any profession or other activity which they are or would like to become authorised to carry on;
- Determining the cause of an accident;
- Protecting charities against misconduct or mismanagement in their administration or recovering the property of charities;
- Securing the health, safety and welfare of staff: and
- Protecting people other than staff against risk to health or safety arising from the actions of a person's staff.

This would appear on the surface somewhat complex, exacerbated by the terminology used in the guidance issued by the ICO on this exemption. The guidance refers to 'stand-alone activities' and 'qualified purposes', although these phrases are not contained within the legislation.

The use of this exemption by the Police Service is somewhat simplified due to the fact that it obviously carries out all of the activities of the prevention and detection of crime, the apprehension or prosecution of offenders and the administration of justice listed under (a), (b) and (c). The Service also has limited exposure to the activities outlined in (e) and (f) where policing involves the physical security of entry points to the

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UK or the external security of prisons. The Service has no functions that would involve the activities in d.

It will be for decision-makers to establish whether the disclosure will or be likely to prejudice one of these activities, so that s31(1) is correctly considered. If a specified purpose is likely to be compromised by disclosure, s31(2) will be engaged instead. It is ACPO's view that it will be rare for the latter to be used as the fact that the Police Service obviously carries out a law enforcement function, as an activity, is an established fact.

This should not however, lead practioners to believe that they do not need to understand the differences between 'activities' and 'specified functions'. The use of this exemption is not restricted to those authorities whose information is simply covered by it, as is the case with s30.

For example a local council may be asked for information that damages a police function, enabling them to engage the exemption legitimately. This is particularly relevant when reviewing information which has been generated by, or mutually shared, as part of partnership working.

WHAT TYPE OF INFORMATION IS COVERED?
The information potentially covered by this exemption is very broad. As a general, but not exhaustive guide, consideration should be given to any disclosure which will or could prejudice:

- Crime prevention, detection or reduction.
- Arrest or prosecution of offenders.
- Penalties for criminal behaviour.
- Breaches of military law.
- Administrative arrangements of courts.
- Court functions.
- Witness care.
- Transport of defendants.
- Civil case processes.
- Effective and efficient conduct of a police force or the service.
- Security and protection arrangements.

RELATIONSHIP WITH S30 (INVESTIGATIONS ETC)
There are areas of overlap between sections 30 and 31. It is mandated within s31 itself that where s30 applies to information, then s31 cannot also be engaged. So although these two exemptions cannot be applied to the same piece of information, there may a need to still use both exemptions in response to a request. It is imperative, therefore, that an applicant is told exactly which exemption is relevant to which part of the information.

For example, a request for information in relation to an investigation is received. The request asks for information about the decision-making process behind key decisions in the investigative process. It would appear that s30 is engaged and therefore s31 is

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excluded. However, examination of the case papers shows that various procedural documents and Manuals of Guidance are also relevant to the request, not just the case papers. Since s30 only covers

'*Information held by a public authority if it has at any time been held by the authority for the purposes of any investigation which the public authority has a duty to conduct'*,

this will cover the case papers but not the other documents. If the disclosure of the additional documents will or be likely to prejudice law enforcement, then s31 will also be engaged.

ATTRACTION OF NCND WHEN S31 IS ENGAGED

There is an option within s31 to Neither Confirm Nor Deny the information is held. (For additional information on using NCND, please see the relevant section). An example where a force may wish to NCND using s31 may be where a particular tactic is not widely known in the public domain and is therefore likely to attract a non-committal, NCND response.

For example, a fictitious policing method is the use of mind reading, something which is not in the public domain, and the prejudice in disclosing such is that people could adopt countermeasures. A request relating to the number of times a force has used mind reading when investigating crime, if simply exempted, would actually confirm that such a tactic is used. As such, an NCND response would be more appropriate.

HARM AND THE PUBLIC INTEREST TEST

Section 31 is a qualified and prejudice-based exemption. This requires the production of evidence of what prejudice may be caused and a full public interest test. (Please refer to the section on harm and the public interest test for more information).

A critical issue is likely to be the timing of the disclosure. Factors favouring disclosure are likely to be weaker while a tactic or methodology is still in current use. However, great care still needs to be taken as it is not uncommon for an outdated tactic to be bought back into use, sometimes many years later, as criminals modify their behaviour.

Information covered by this exemption also tends to attract the most difficult public interest balance test. The public interest in knowing why something was done, particularly if it were badly managed, is a powerful argument. The ICO has outlined his view that cases where justice was not done, either to the accused person or victim, may shift the public interest towards disclosure. This is especially so in cases where procedural failure or mismanagement is the cause.

Each request must be dealt with on a case-by-case basis. There is a need for each piece of information to be assessed. Simply applying a 'blanket' exemption because the information requested would prejudice law enforcement is not valid. The most cost and time effective method of achieving this detailed assessment is to establish exactly what information the applicant really wants, potentially removing the need to analyse each separate piece.

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HISTORICAL INFORMATION
This exemption does not apply to information in records that are more than 100 years old.

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SECTION 32
INFORMATION CONTAINED IN COURT RECORDS

LEGISLATION

(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in -

(a) any document filed with, or otherwise placed in custody of, a court for the purposes of proceedings in a particular cause or matter,

(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or

(c) any document created by
(i) a court, or
(ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

(2) Information is exempt from the duty to communicate where it is held only by virtue of being contained in:

(a) any document placed in custody of a person conducting an enquiry or arbitration, for the purposes of the inquiry or arbitration, or

(b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.

(4) In this section -

(a) 'court' includes any tribunal or body exercising the judicial power of the State,

(b) 'proceedings in a particular cause or matter' includes any inquest or post-mortem examination

(c) 'inquiry' means any injury or hearing held under any provision contained in, or made under, an enactment, and

(d) except in relation to Scotland, 'arbitration' means any arbitration to which Part 1 of the Arbitration Act 1996 applies.

EXEMPTION TYPE: Absolute
Class-based

ACPO POLICY

Although large amounts of police information are submitted to the courts, the majority of this information is unlikely to be covered by the s32 exemption.

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This is due to the key words used within the legislation which stipulate that information held '**only** by virtue' is covered.

Police information is rarely gathered solely for court use as it tends to have multiple functions. In fact, it is unlikely at the information-gathering stage that a definitive knowledge as to the likely final use of the information would be known. For example witness statements are taken as the Police Service has a statutory function to investigate crime and secure evidence. However, at the time statements are taken, the future or end usage of that information is unlikely to be known.

Another example would be a set of financial records which are the subject of litigation. If those records were held for the purposes of that litigation only then they would be covered by s32. However, the reality is that they probably existed because of the authority's obligation to keep financial records in the first place.

In any case, information relating to forthcoming criminal or civil litigation cases is not covered by this exemption. The proceedings in question must have already commenced or have been concluded at the time the request was received for s32 to be engaged.

INFORMATION LIKELY TO BE COVERED

Anything generated by the court itself will attract this exemption in addition to anything produced by the police solely for court use. Discovering the provenance and reasons for the existence of information is key to identifying whether this exemption may be engaged. If in any doubt practitioners should seek advice from the author of the document or the Criminal Justice Departments (or equivalent) who are responsible for the preparation of court papers.

Some of the information likely to attract this exemption includes:

- Warrants
- Court orders
- Court transcripts and records
- Interim court orders
- Bail applications
- Witness summons

HISTORICAL INFORMATION

This exemption is only valid for information less than 30 years old.

This exemption is mainly intended for use by the courts themselves and its use is limited with regard to police information. It is felt that the more police-specific exemptions of s30 and s31 will be more effective in protecting the type of information concerned, especially if there is any doubt as to why it was created. However, it should be borne in mind that this is a powerful absolute, class-based exemption meaning there is no need to evidence prejudice or conduct a public interest test

www.informationcommissioner.gov.uk

http://www.dca.gov.uk/foi/guidance/exguide/index.htm

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SECTION 33
AUDIT FUNCTIONS

LEGISLATION

(1) This section applies to any public authority which has function in relation to -
(a) the audit of the accounts of other public authorities
(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's function in relation to any of the matters referred to in subsection (1).

(3) The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

EXEMPTION TYPE: Qualified
Prejudice-based

APPLY: Public interest test
Evidence of harm

ACPO POLICY

This exemption may be cited by public authorities that have functions relating to either:

- The audit of accounts of other public authorities; or
- To the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their function.

Importantly, this exemption **does not** cover information that relates to a local authority's internal audit.

ACPO guidance is that this exemption may be used for information that's intended for future publication where the public interest test has been applied and it is judged that there may be an adverse effect if the information requested is released prematurely.

This exemption is designed to protect organisations with an external audit function – such as the Audit Commission or the Her Majesty's Inspector of Constabularies (HMIC) – where the audit results are, by their very nature, for public consumption.

This exemption **does not** cover auditing processes that an organisation may exercise on itself, internally.

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SECTION 34
DISCLOSURE WHICH WOULD INFRINGE PARLIAMENTARY PRIVILEGE

LEGISLATION

(1) Information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

(2) The duty to confirm or deny does not apply if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

EXEMPTION TYPE: Absolute
Class-based

ACPO POLICY

Information is exempt from disclosure if its release would infringe the privileges of either House of Parliament.

The purpose of this exemption is to protect Parliament's power to retain control over disclosure of its own information.

The duty to confirm or deny is excluded under this exemption where confirming or denying the existence of information would infringe the privileges of either House.

Whilst confirmation or denial of the existence of information is less likely to infringe Parliamentary privilege than disclosure itself, s34(2) will apply where confirmation or denial would result in a breach of privilege.

It is ACPO's view that this exemption would be used minimally and will cover correspondence from the Cabinet Office and the Prime Minister.

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SECTION 35
FORMULATION OF GOVERNMENT POLICY AND OTHER GOVERNMENTAL INTERESTS

LEGISLATION

1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –

(a) the formulation or development of government policy

(b) Ministerial communications

(c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or

(d) the operation of any Ministerial private office

(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

(a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or

(b) for the purposes of subsection (1)(b), as relating to Ministerial communications.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).Duty to confirm or deny does not arise in relation to information that is exempt as defined above.

EXEMPTION TYPE: Qualified
Class-based

APPLY: Public interest test

ACPO POLICY

This exemption was incorporated into the Act to ensure that policy discussion can be conducted privately. Without this protection, the 'normal' processes of government may be inhibited. Civil servants, for example, may be less candid in their advice to Ministers when considering policy options.

This exemption is reasonably broad in its scope and can be used to cover the formulation or development of government policy even where a policy has been finally adopted.

It is ACPO's view that this exemption will have limited application to the Police Service.

Limitations on the scope of this exemption have been introduced. For example, once a

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decision on government policy has been made, background statistical information that provided an informed background in the decision-making process does not fall under this exemption and may therefore be subject to disclosure.

ICO Guidance recommends the disclosure of factual information used to underpin the decision-making process. However, distinguishing between statistics and other forms of fact is more difficult than it may appear. When considering the public interest when differentiating between factual and other information, the Act states:

> *'regard shall be had to the particular public interest in the disclosure of factual information which has not been used, or is intended to be used, to provide an informed background to decision-taking'.*

Whilst this exemption is wide-ranging, it is not all-encompassing and covers only information relating to the 'formulation or development of government policy'. Information that relates to the execution of adopted policies or information concerning other procedural or administrative functions will not fall within the exemption.

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SECTION 36
DISCLOSURE PREJUDICING THE EFFECTIVE CONDUCT OF PUBLIC AFFAIRS

LEGISLATION

(1) This section applies to -
(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35,
(b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-
(a) would, or would be likely to, prejudice-
(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
(ii) the work of the Executive Committee of the Northern Ireland Assembly, or
(iii) the work of the executive committee of the National Assembly for Wales,
(b) would, or would be likely to, inhibit-
(i) the free and frank provision of advice, or
(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

EXEMPTION TYPE: Qualified
Prejudice-based

APPLY: Evidence of harm
Public interest test

ACPO POLICY

Information is exempt from disclosure if, in the reasonable opinion of a 'qualified person'*, its disclosure would prejudice, or would be likely to prejudice, certain

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specified interests relating to public affairs.

Where the information in question is held by either House of Parliament, S36 is an absolute exemption. This exemption may well be applied to stop disclosures that might prejudice the effective conduct of Parliamentary business, even when the principle of Parliamentary Privilege is not threatened.

In other cases, s36 is a qualified exemption. This means the public interest test must be applied.

Where, in all circumstances of the case, the public interest in non-disclosure outweighs the public interest in disclosure, the information need not be disclosed.

Section 36 differs from other exemptions because it uses the term 'reasonable opinion of a qualified person'. Information to which this section applies is exempt information if, in the reasonable opinion of a 'qualified person', disclosure of the information:

(b) would, or would be likely to, inhibit
  (i) the free and frank provision of advice, or
  (ii) the free and frank exchange of views for the purposes of deliberation, or
(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

The main beneficiaries of this exemption will be public authorities. This exemption has been referred to as a 'mopping up' clause in the Act to prevent disclosure of information that's not covered by other specific provisions.

Under this exemption, there is no duty to confirm or deny if, in the opinion of 'reasonable person,' the information is not disclosable.

Assuming a 'qualified person', on reviewing the request for information, believes that the information should be exempt because public interest favours retention, the release of material requested may be declined.

* A specific definition of a 'qualified person' is not included in the Act. Qualified persons are authorised by a Minister of the Crown. For the Police Service, the suitably 'qualified person' is the **Chief Constable of Commissioner**.

It is ACPO's view that this exemption will have minimal relevance and will only be used by the Police Service in the most exceptional cases.

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SECTION 37
COMMUNICATION WITH THE ROYAL FAMILY AND HONOURS

LEGISLATION

(1) Information is exempt information if it relates to –

(a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or

(b) the conferring by the Crown of any honour or dignity

(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

EXEMPTION TYPE: Qualified
Class-based

APPLY: Public interest test

MANDATORY REFERRAL TO CRU

ACPO POLICY

This exemption covers letters or other documents received from members of the Royal Family or Royal Household. It will also apply to notes of meetings between officials of a public authority and a member of the royal family or royal household.

ACPO guidance is that all communication falling under this exemption will be actively protected. **Where a request is received in relation to the Royal Family and/or any policing issues associated with them, the request must be referred to the Central Referral Unit.**

Any response will be approved by the ACPO lead within the Metropolitan Police Service and the keeper of historical records within Buckingham Palace.

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SECTION 38
HEALTH & SAFETY

LEGISLATION

(1) Information is exempt information if its disclosure under this Act would, or would be likely to -

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

EXEMPTION TYPE: Qualified
Prejudice-based

APPLY: Evidence of harm
Public interest test

ACPO POLICY

This exemption appears to be of particular relevance to the Police Service.

A s38 exemption may be applied where disclosure of information would, or would be likely to endanger:

- The physical or mental health of any individual; or
- The safety of an individual.

It is likely that this definition will cover a wide spectrum of scenarios. By applying this exemption to 'any individual', it may be interpreted as the mental or physical health of a police officer, the requester, another individual or the public in general.

This provision is in line with a similar provision in the Data Protection Act (DPA) that prohibits subject access where there is a risk of 'serious harm'.

This exemption also has the potential to be linked to the provision of confidential and personal information where identification of the source may place that person at risk.

ACPO guidance is that this exemption would be applied vigorously in respect of protecting the identity (and therefore the safety) of informants. This cannot be stated strongly enough.

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Other areas that would be protected under s38 are photographs and videos showing post-mortems, injuries, accidents, crime scene videos and similar material that would be likely to affect the mental health of those affected if released into the public domain.

Other areas that would be protected include information about damage to property that may lead to injury of people.

ACPO cannot see how, in any case or circumstance, it would ever be in the public interest to release photographs and documents that are, by nature, distasteful.

In our consideration, anything requested that is anti-s38 that would have a detrimental effect on mental well-being to the family of those investigated or the public, will be vigorously protected.

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SECTION 39
ENVIRONMENTAL INFORMATION

LEGISLATION

(1) Information is exempt information if the public authority holding it-
(a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or
(b) would be so obliged for any exemption contained in the regulations.

(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(3) Subsection (1)(a) does not limit the generality of section 21(1)

EXEMPTION TYPE: Qualified
Class-based

APPLY: Evidence of harm

ACPO POLICY

This exemption aims to ensure that any requests for information are handled under specific regulations implementing the UK's international obligations on access to environmental information rather than under the Act.

Current regulations in force since 1992 are expected to be replaced by new regulations as from January 2005. Where a request for environmental information is made, it should be considered under the Regulations rather than under the FOI Act.

ACPO suggests mechanisms should be in place to automatically route queries relating to environmental information through the Environmental Information Regulations.

For more information, please see Appendix 1.

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SECTION 40
PERSONAL INFORMATION

LEGISLATION

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of 'data' in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and (b) does not arise in relation to other information if or to the extent that either-

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

EXEMPTION TYPE: Absolute (in part)
Class-based

APPLY: Public interest test on rare occasions

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ACPO POLICY

Under the DPA, applicants must clearly state their intention to apply for their own personal information.

This is not the case under FOI: there is no requirement to specify that a request is being made under FOI legislation and it is up to the authority receiving the request to determine the correct path.

The interface between the DPA and FOIA is complex. The FOIA contains some significant amendments to the DPA. In particular, it increases the range of data to which an individual has rights of access under the DPA. It will be necessary, therefore, in certain circumstances when processing FOI requests to step into the DPA.

S40 for the most part is an absolute exemption

S40(1)

Where a request is made by an applicant requesting their own personal information, this is an absolute exemption under s40(1).

This application becomes a Subject Access Request under the DPA and should be channelled through appropriate procedures to be dealt with by Data Protection Officers and a s40(5) refusal notice issued.

S40(2)

If the request for information relates to third parties (anybody other than the data subject), it is absolute under s40(2) if the third party's data protection rights would be breached by disclosure. Releasing personal information to someone other than the data subject will almost always infringe the data protection principles contained in the DPA.

Data Protection Principles:

According to the 8 principles, data must be:

- Fairly and lawfully processed;
- Processed for limited purposes;
- Adequate, relevant and not excessive;
- Accurate and up to date;
- Not kept for longer than is necessary;
- Processed in line with your rights;
- Secure; and
- Not transferred to other countries without adequate protection.

Of the above, the first principle is the most relevant to decision making under FOI. Practitioners must always determine whether disclosure is 'fair' to the data subject.

'Personal Data' means data that relate to a living individual who can be identified:

- From those data; or
- From those data and other information that is in the possession of, or likely to come into the possession, of the data controller.

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This definition also includes the expression of any opinion about the individual or any indication of the intentions of the data controller or any other person in respect of the individual.

'Sensitive Personal Data' means personal data consisting of information that relates to:

- The racial origin of the data subject;
- The political opinions of the data subject;
- The religious beliefs or other beliefs of a similar nature;
- Membership of a Trade Union or similar;
- His or her physical or mental health or condition;
- His or her sexual life;
- The commission or alleged commission by the data subject of any offence; or
- Any proceedings of any offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings.

Requests for information about third parties are covered by the FOIA but data protection principles apply. This is governed by s40(2). For this type of request, there is a need to consider whether disclosure contravenes the data protection principles and the lawful processing of data

This exemption falls into 2 parts. Where the release of data would:

- Contravene data protection principles; or
- If the request had been made by the subject of the data, it would be covered by an exemption under the DPA.

Where requests relating to third party information are made and exemptions may not be applied, then the information will be released. **However, this will be rare.**

S40(5)

Please refer to the NCND chapter when using s40(5).

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SECTION 41
INFORMATION PROVIDED IN CONFIDENCE

LEGISLATION

(1) Information is exempt if -

(a) It was obtained by the public authority from any other persons (including another public authority), and

(b) The disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

EXEMPTION TYPE: Absolute
Class-based

Although not qualified, there is a requirement to conduct a PIT on whether the common law duty of confidentiality can be overcome.

ACPO POLICY

Section 41 covers information provided in confidence and is likely to have widespread relevance to the Police Service. However, whilst the exemption appears to be both class-based and absolute, its power is reduced because it is defined in 'relation to the equitable action for breach of confidence'.

This means s41 is an absolute exemption - where release of the information would result in an actionable breach of confidence - but it has its own built-in form of testing for whether disclosure is in the public interest.

- Information received from another body or person.
- Information that is commercial, personal and official in nature and of a confidential nature.
- Information that the public authority itself perceives as confidential.

This exemption does not cover information that a public authority has generated internally. It specifically relates to information that has been obtained by the public authority from another person (this may include an individual, a company, a local authority or any other 'legal entity'). The exemption may be enforced only where an actionable breach of confidence would occur should the information be disclosed. This

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is where release would result in the provider or a third party taking the authority to court.

- Information falling within s41 may also be exempt from disclosure under s40 (Personal information), s43 (Commercial interests) or s30(2) (Confidential sources).

BREACH OF CONFIDENCE TEST
To determine whether a breach of confidence would occur if the information were to be disclosed, the following questions need to be applied:

- **Does the information have the necessary quality of confidence about it?**
  Information that is already in the public domain, or has not been treated as confidential by the originator, does not have the necessary quality of confidence. Where information has been subjected to restricted disclosure – where it is not already available publicly or where the originator of the information has treated it as confidential – the information may still be subject to an obligation of confidence.

- **Was the information imparted in circumstances that imply an obligation of confidence?**
  This refers to whether the 'giver' of the information expresses that the information is confidential in nature when s/he imparts the information to others. At the same time, the recipient of the information must acknowledge that the information received is confidential in nature. In this case, there is an obligation of confidence attached to the information.

- **Was there an unauthorised use of that information to the detriment of the person communicating it?**
  This exemption also applies to information given to a public authority by another body or individual, not information that a public authority itself might consider as confidential. When deciding on whether to release the information or not, there is no obligation to consult third parties but the draft Codes of Practice state that those parties affected by disclosure should be approached.

- **The Duty to Confirm or Deny S41(2)**
  If confirming existence of the information would be likely to be a breach of confidence, then the need to confirm/deny is negated. This applies where information is provided by informants.

Where the legal rights of a third party would be breached – under the DPA, for example – they should be consulted prior to disclosure.

The ACPO view is that information given by informants, whether internal or external, will be exempt under s41, subject to the breach of confidence test.

The provision of information to the Police Service by individuals and organisations remains critical to the prevention and detection of crime. Much of this information is supplied as part of routine transactions with victims, witnesses and other persons connected to crimes or other incidents that require police involvement.

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In addition, the Police Service actively encourages the community to supply information relating to specific crimes and more general criminal activity through Crimestoppers and the use of informants.

It has been long recognised that the supply of information concerning serious and organised criminal activity to the police has been critical to crime detection and/or disruption. In many cases this information is supplied only as a result of assurances of confidentiality. In the policing context, any breach of confidentiality that leads to the identification of informants or organisations may have serious consequences, including loss of life.

Apart from the serious consequences that arise in any individual case, the disclosure of information relating to confidential sources is likely to reduce the willingness of individuals to supply information to the Police Service and engage with the wider criminal justice system.

CHIS will be actively protected for the life of the informant (and potentially beyond where family issues are relevant).

OFFICIAL GUIDANCE

The law of confidence is a common law concept. To determine whether an obligation of confidence exists in terms of FOI, there is a need to consider:

- The circumstances under which the information was provided to the authority; and
- The nature of the information.

Where explicit conditions of confidence are attached to information, it is clear that a public authority should be cautious in its subsequent use or disclosure. The conditions of confidence may be written, contractual or verbal.

It becomes more difficult to judge whether an obligation of confidence exists when it is not stated explicitly, but is obvious or implied from the circumstances of its transfer. In these cases, it is recommended that the advice of any third party likely to be affected by disclosure should be considered prior to the release of information. Where information is gathered as a result of the statutory requirements or powers conferred upon a public authority, there is a need to carefully consider whether or not the law of confidence would prevent disclosure of information to third parties.

Information that has the necessary quality of confidence about it should be protected by an obligation of confidence. The information itself need not be highly sensitive in nature but it should not be trivial either.

The information in question must not be readily available elsewhere or by other means. It should not be able to be surmised. Equally, the information need not necessarily be secret: a victim of crime, for example, does not lose the right to confidentiality if they disclose details of a crime to a friend.

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The courts have identified three general sets of circumstances that may precipitate the disclosure of information:

- Disclosures with consent. Where the person (individual or organisation) to whom the obligation of confidentiality applies consents to the release of the information, this will not lead to an actionable breach of confidence;
- If a disclosure is required by law, it is unlikely the information will be subject to an FOI request in any event; or
- Disclosures where there is a strong public interest in releasing the information requested.

When enforcing this exemption, public authorities must be satisfied that any breach of confidence that would occur from the release of the information would be actionable ie. the aggrieved third party would have the right to take the authority to court.

Thus, a public authority must:

- Be sure that the information in question is confidential;
- Take advice from the people – individuals or organisation – affected but be aware that third parties are not afforded the right of veto and the decision to release or withhold is with the public authority; and
- Be aware that the aggrieved party must have legal standing – one Government department can not, for example, sue another.

The GPMS is a useful preliminary indicator as to the nature of the information. However, documents and information marked 'confidential' are not necessarily automatically exempt from release.

Documents that were originally labelled 'confidential' may no longer be confidential because of the time elapsed. Authorities should consider the introduction of a system that defines and records the period of time during which the marking scheme is anticipated to be relevant.

There is no guarantee that information received from external bodies will have the necessary quality of confidence about it after a period of time. Similar to issues relating to the internal marking scheme, what was confidential at the time of writing may no longer be at the time disclosure is requested. However, prior to disclosure, it is recommended that a public authority consults the information provider and any affected third party, notwithstanding the fact that the ultimate decision will rest with the public authority.

The law of confidence is legally complex. The IC recommends that other exemptions contained within the Act may be more immediately relevant.

This exemption can only be used for externally generated information since a public authority is unable to sue itself.

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SECTION 42
LEGAL PROFESSIONAL PRIVILEGE

LEGISLATION

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

EXEMPTION TYPE: Qualified
Class-based

APPLY: Public interest test

ACPO POLICY

Under the Act, an applicant may not obtain disclosure of legal advice offered to a public authority by a solicitor in private practice or an in-house lawyer, subject to the application of the public interest test since this is a qualified exemption.

This exemption is class-based. This means there is no requirement to demonstrate any 'prejudice' that may occur to the professional legal adviser/client relationship if information is disclosed. It is inherently implied that the release of information that may appear trivial might undermine the relationship between lawyer and client. However, the public interest test must be applied to determine whether the information should be disclosed or retained.

By virtue of s63 of the Act, this exemption will no longer apply after a period of 30 years following the year after the record in question was created.

For the Police Service, s30 (Investigations and proceedings conducted by public authorities) or s31 (Law enforcement) may be more easily applied than s42, Legal professional privilege.

Note: Where s42 is being considered or cited, the force's legal services department must be contacted and their views sought.

The client-legal professional privilege is a principal enshrined in history that must be respected.

Advice provided by the CPS is not covered by s42.

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SECTION 43
COMMERCIAL INTERESTS

LEGISLATION

(1) Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice commercial interests of any person (including the public authority holding it).

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

EXEMPTION TYPE: Qualified
Class-based

APPLY: Public interest test

ACPO POLICY

Section 43 sets out an exemption from the right to know if:

- The information requested is a trade secret. In this case, there is no need to apply the public interest test and consider the harm its release may cause. It may be withheld; or
- The release of the information is likely to prejudice the commercial interests of any person (a 'person' may be an individual, a company, public authority itself or any other legal entity). Where the information requested does not constitute a trade secret, it can only be withheld if the public authority is satisfied a person's commercial interests would be compromised by its release.

Section 43 does not absolve the authority from the obligation to inform an applicant whether it holds the information that constitutes a trade secret.

However, where the requested information is likely to prejudice commercial interests other than trade secrets, s43 removes the obligation to confirm whether the information is held.

ACPO guidance is that substantial amounts of information will be commercially sensitive and therefore may be withheld under the terms of s43.

If information is produced or compiled with a view to it being sold on as a commercial product – as with training materials, for example – then this too will fall under the s43 exemption.

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Where the information requested is neither commercially sensitive nor commercially valuable or where it has no has no commercial value to the organisation in any other format, then authorities must consider releasing it, subject to application of the public interest test.

OFFICIAL GUIDANCE

A 'trade secret' is not defined in the FOIA. However, its interpretation can be wide-ranging and may extend to customers and the goods they buy, a company's pricing structure if this is generally not in the public domain and the source of a company's 'competitive advantage'. In keeping with other breaches of confidentiality, the unauthorised disclosure of information may result in legal action being taken against the public authority.

By definition, disclosing a trade secret would prejudice a commercial interest. The public authority must confirm or deny that it holds the information.

The following questions will help a public authority determine whether the information requested constitutes a trade secret:

- Is the information commercially sensitive and does it give a company a 'competitive edge' over its rivals?
- Is it obvious from the nature of the information that its release would cause harm and erode competitive advantage? Has the owner of the information stated this?
- Is the information already published in some form and in the public domain?
- How easy would it be for competitors to discover or reproduce the information for themselves? Generally, the less skill or effort that was required to generate the information, the less likely the information will constitute a trade secret.

The concept of commercial interests is wide and extends to a person's ability to successfully trade in a commercial environment. The underlying motive for commercial activity is profit.

Types of information that may affect commercial interests include:

- **Procurement** – public authorities will hold a range of information relating to the procurement process and proposed future procurement plans. This may include information held in unsuccessful bids right through to the details of the contract with the successful company. Details may also be held of how a company or product has performed under contract.

- **Regulation** – public authorities that perform their regulatory functions and potential breaches may hold information that will support this role.

- **Public authority's own commercial activities** – those public authorities that engage in commercial activities may hold information that will potentially fall within the scope of the exemption.

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- **Policy development** – information that is commercial in nature may be recorded during the formulation or evaluation.

- **Policy implementation** – public authorities may hold information relating to the assessment of business proposals and the awarding of grants that may be commercially sensitive in nature.

- **Private finance initiative/public private partnerships** – where the private sector is involved in the financing and delivering of public sector projects and services, the public authority may hold information that is both project-related and more general.

The information listed above is not necessarily exempted from disclosure under FOIA but is subject to the prejudice test and the public interest test prior to disclosure.

The following outline some of the questions that may be asked when reviewing whether the release of information may harm the commercial interests of either the public authority or supplying companies:

- **Does the information relate to, or could it impact on commercial activity?**
  Some information may directly relate to commercial activity whilst other information may have a more indirect link.

- **Is the commercial activity conducted in a competitive environment?**
  The lower the level of competition in any given marketplace, the less likely commercial interests will be prejudiced with the release of information. Where a public authority is the sole purchaser of specialist equipment, for example, the commercial interests of the company could be more dependent on the procurement plans of the public authority rather than the impact of releasing commercial information.

- **Would there be damage to reputation or business confidence?**
  If release were to damage a company's reputation or the confidence of customers, suppliers or investors, the commercial exemption may be applied. The same may be said where release may impact revenue or threaten ability to obtain supplies or secure finance.

- **Whose commercial interests are affected?**
  In some circumstances, it may be unclear as to whose commercial interests may be prejudiced by disclosure of information. For example, if the amount of money set aside by a public authority for procurement is released, the bargaining position of the authority may be compromised if suppliers then increase their prices.

- **Is the information commercially sensitive?**
  Companies compete by offering something different from their rivals. The difference will often be reflected in their price and may also relate to the quality or specification of the product or service they offer. Information identifying this unique

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element is likely to be commercially sensitive. It may also inadvertently reveal information about profit margins and possibly working practises.

- **What is the likelihood of the prejudice being caused?**
  A judgement will need to be made on the likely prejudice caused by disclosure of certain information. Whilst the prejudice may not be substantial, it does not have to be trivial either. Prejudice should be likely from disclosure or there should be a significant risk, rather than it being a remote possibility.

The public authority must always consider whether the release of information is in the public interest, regardless of whether or not the information forms a trade secret. Authorities must weigh the possible prejudice caused by disclosure against the likely benefit to the applicant and the wider public.

In addition, just because a request for information was declined at one point in time, it does not mean that the public interest is best served if that information is permanently withheld. Market conditions may change and information relating to costs may become out of date quickly.

FOI decision-makers must also remember that there is an overlap between commercial interest and confidentiality. They will determine whether or not disclosure might prejudice commercial interests of a third party, consider the likelihood of a third party being able to successfully take action in the courts for breach of confidence.

Consultation

A public authority may wish to consult parties likely to be affected by the disclosure of commercial information to determine likely prejudice. Discussion with suppliers to identify the types of information that may harm commercial interests if disclosed may be appropriate.

A review of circumstances under which the public authority agrees to consult suppliers in the event of FOI requests is also advisable. However, it is ultimately the responsibility of the public authority to decide whether or not an exemption applies to prevent the release of information.

Contracts/Confidentiality Clauses

There is an overlap between s43 and s41 which provides that information is exempt where its release could lead to a public authority being taken to court for a breach of confidence.

During the procurement process, suppliers may request of public authorities that they sign confidentiality clauses that attempt to prevent the disclosure of information. However, blanket clauses that are designed to restrict the disclosure of **any** information, including that which could be disclosed without any prejudice to the commercial interests of the supplier, are not acceptable in the view of the IC. Alternatively, clauses that seek to identify and protect that information that would genuinely prejudice a third party's commercial interests are perfectly acceptable.

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In the future, public authorities may be well advised to develop a new approach to confidentiality agreements. They may also wish to review existing contracts and discuss with suppliers and contractors the circumstances under which the information might be released in response to a request for information.

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SECTION 44
INFORMATION COVERED BY PROHIBITIONS ON DISCLOSURE

LEGISLATION

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
(a) is prohibited by or under any enactment
(b) is compatible with any Community obligation, or
(c) would constitute punishment as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

EXEMPTION TYPE: Absolute
Class-based

ACPO POLICY

This exemption is something of a catch-all and states information that may be prohibited from disclosure under other legislation is protected under FOI.

Under this exemption, information is exempt from disclosure if it is prohibited from being released under any other enactment.

Where there is another piece of legislation governing the release of certain categories or types of information, these are sufficient grounds to refuse release under an FOI request.

In effect, s44 allows other pieces of legislation to be imported into the FOI Act under s1(a).

Section 1(b) prohibits disclosure of information if it is incompatible with or contradictory to any European Union legislation covering release of categories or types of information.

Section 1(c) facilitates the withholding of any information that would, if released, lead to contempt of court.

If this exemption had not been included in the FOIA, there would be a danger that where there is a requirement for information to be withheld under other legislation, it may have been releasable under FOI, causing a potentially serious conflict without the protection afforded by s44.

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APPENDIX 1
ENVIRONMENTAL INFORMATION REGULATIONS

LEGISLATION

2(1)(a)…environmental information' has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural or any other material form on –

(a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
(b) factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment affecting or likely to affect the elements of the environment referred to in (a);
(c) measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
(d) reports on the implementation of environmental legislation;
(e) cost-benefit and other economic analyses and assumptions used within the framework measures and activities referred to in (c); and
(f) the state of human health and safety, including the contamination of the food chain, where relevant conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements by any of the matters referred to in (b) and (c).

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –
(a) international relations, defence, national security or public safety;
(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
(c) intellectual property rights;
(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
(f) the interests of the person who provided the information where that person-
(i) was not under, and could not have been out under, any legal obligation to supply it to that or any other public authority;
(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
(iii) has not consented to its disclosure; or
(g) the protection of the environment to which the information relates.

(6) For the purposes of paragraph (1), a public authority may respond to a request by

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neither confirming nor denying whether such information exists and it held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

ACPO POLICY

It is ACPO Policy that requests for information that fall under EIR will be handled in exactly the same way as Freedom of Information requests, with the exception that EIR requests may be received verbally.

The main differences between the FOIA and the EIR may be identified as follows:

- The key difference is that, unlike FOI requests, EIR requests may be received verbally and there is no legislative requirement for them to be written down.

- Under FOIA, the public interest test applies only in the case of qualified exemptions. Under EIR, the public interest test applies to all of the exceptions.

- The duty to confirm or deny applies in all cases under EIR except where there would be an adverse affect on international relations, defence, national security, public safety and confirming or denying would therefore not be in the public interest.

- Under EIR, any disclosure that would adversely affect the rights of an individual not obliged to provide the authority with information would not be entitled to disclose where the individual affected has not consented to disclosure.

- There are additional exceptions under EIR that are not specifically covered under FOIA such as exceptions to disclose in relation to internal communications and exceptions on disclosure where release would adversely affect intellectual property rights or the protection of the environment. Under EIR, there are no exceptions that link the release of information with a prejudicial impact on the economic interests of the UK or part of the UK

- Under EIR, the applicant has 40 working days to appeal any decision made by the authority and the authority must respond to any complaint within 40 working days.

List of EIR Exceptions

3(a) Exempt personal data in regulation 12.
4(b) Manifestly unreasonable in regulation 12.
4(c) Too general in regulation 12.
4(d) Work in progress / incomplete data in regulation 12.
4(e) Internal communications in regulation 12.
5(a) Adverse effect on international relations, defence, national security or public safety in regulation 12.
5(b) Adverse effect on course of justice or conduct of inquiries in regulation 12.
5(c) Adverse effect on intellectual property rights in regulation 12.

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5(d)	Impinges on confidentiality of a public authority's work (where provided by law) in regulation 12.
5(e)	Impinges on confidentiality of commercial or industrial information (where provided by law to protect a legitimate economic interest) in regulation 12.
5(f)	Adverse effect on interests of person who provided the information (subject to conditions) in regulation 12.
5(g)	Adverse effect on protection of environment to which information relates in regulation 12.

Additional information may be retrieved at:

http://www.ico.gov.uk/what_we_cover/environmental_information_regulation/guidance.aspx

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APPENDIX 2
FOI LEGISLATION

PART I

ACCESS TO INFORMATION HELD BY PUBLIC AUTHORITIES

Right to information

1 General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny".

2 Effect of the exemptions in Part II

(1) Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where either—

(a) the provision confers absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information, section 1(1)(a) does not apply.

(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

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(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(3) For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption—

(a) section 21,

(b) section 23,

(c) section 32,

(d) section 34,

(e) section 36 so far as relating to information held by the House of Commons or the House of Lords,

(f) in section 40—

(i) subsection (1), and

(ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,

(g) section 41, and

(h) section 44.

3 Public authorities

(1) In this Act "public authority" means—

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which—

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6.

(2) For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.

4 Amendment of Schedule 1

(1) The Secretary of State may by order amend Schedule 1 by adding to that Schedule a reference to any body or the holder of any office which (in either case) is not for the time being listed in that Schedule but as respects which both the first and the second conditions below are satisfied.

(2) The first condition is that the body or office—

(a) is established by virtue of Her Majesty's prerogative or by an enactment or by subordinate legislation, or

(b) is established in any other way by a Minister of the Crown in his capacity as Minister, by a government department or by the National Assembly for Wales.

(3) The second condition is—

(a) in the case of a body, that the body is wholly or partly constituted by appointment made by the Crown, by a Minister of the Crown, by a government department or by the National Assembly for Wales, or

(b) in the case of an office, that appointments to the office are made by the Crown, by a Minister of the Crown, by a government department or by the National Assembly for Wales.

(4) If either the first or the second condition above ceases to be satisfied as respects any body or office which is listed in Part VI or VII of Schedule 1, that body or the holder of that office shall cease to be a public authority by virtue of the entry in question.

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(5) The Secretary of State may by order amend Schedule 1 by removing from Part VI or VII of that Schedule an entry relating to any body or office—

(a) which has ceased to exist, or

(b) as respects which either the first or the second condition above has ceased to be satisfied.

(6) An order under subsection (1) may relate to a specified person or office or to persons or offices falling within a specified description.

(7) Before making an order under subsection (1), the Secretary of State shall—

(a) if the order adds to Part II, III, IV or VI of Schedule 1 a reference to—

(i) a body whose functions are exercisable only or mainly in or as regards Wales, or

(ii) the holder of an office whose functions are exercisable only or mainly in or as regards Wales, consult the National Assembly for Wales, and

(b) if the order relates to a body which, or the holder of any office who, if the order were made, would be a Northern Ireland public authority, consult the First Minister and deputy First Minister in Northern Ireland.

(8) This section has effect subject to section 80.

(9) In this section "Minister of the Crown" includes a Northern Ireland Minister.

5 Further power to designate public authorities

(1) The Secretary of State may by order designate as a public authority for the purposes of this Act any person who is neither listed in Schedule 1 nor capable of being added to that Schedule by an order under section 4(1), but who—

(a) appears to the Secretary of State to exercise functions of a public nature, or

(b) is providing under a contract made with a public authority any service whose provision is a function of that authority.

(2) An order under this section may designate a specified person or office or persons or offices falling within a specified description.

(3) Before making an order under this section, the Secretary of State shall consult every person to whom the order relates, or persons appearing to him to represent such persons.

(4) This section has effect subject to section 80.

6 Publicly owned companies

(1) A company is a "publicly-owned company" for the purposes of section 3(1)(b) if—

(a) it is wholly owned by the Crown, or

(b) it is wholly owned by any public authority listed in Schedule 1 other than—

(i) a government department, or

(ii) any authority which is listed only in relation to particular information.

(2) For the purposes of this section—

(a) a company is wholly owned by the Crown if it has no members except—

(i) Ministers of the Crown, government departments or companies wholly owned by the Crown, or

(ii) persons acting on behalf of Ministers of the Crown, government departments or companies wholly owned by the Crown, and

(b) a company is wholly owned by a public authority other than a government department if it has no members except—

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(i) that public authority or companies wholly owned by that public authority, or

(ii) persons acting on behalf of that public authority or of companies wholly owned by that public authority.

(3) In this section— "company" includes any body corporate; "Minister of the Crown" includes a Northern Ireland Minister.

7 Public authorities to which Act has limited application

(1) Where a public authority is listed in Schedule 1 only in relation to information of a specified description, nothing in Parts I to V of this Act applies to any other information held by the authority.

(2) An order under section 4(1) may, in adding an entry to Schedule 1, list the public authority only in relation to information of a specified description.

(3) The Secretary of State may by order amend Schedule 1—

(a) by limiting to information of a specified description the entry relating to any public authority, or

(b) by removing or amending any limitation to information of a specified description which is for the time being contained in any entry.

(4) Before making an order under subsection (3), the Secretary of State shall—

(a) if the order relates to the National Assembly for Wales or a Welsh public authority, consult the National Assembly for Wales,

(b) if the order relates to the Northern Ireland Assembly, consult the Presiding Officer of that Assembly, and

(c) if the order relates to a Northern Ireland department or a Northern Ireland public authority, consult the First Minister and deputy First Minister in Northern Ireland.

(5) An order under section 5(1)(a) must specify the functions of the public authority designated by the order with respect to which the designation is to have effect; and nothing in Parts I to V of this Act applies to information which is held by the authority but does not relate to the exercise of those functions.

(6) An order under section 5(1)(b) must specify the services provided under contract with respect to which the designation is to have effect; and nothing in Parts I to V of this Act applies to information which is held by the public authority designated by the order but does not relate to the provision of those services.

(7) Nothing in Parts I to V of this Act applies in relation to any information held by a publicly-owned company which is excluded information in relation to that company.

(8) In subsection (7) "excluded information", in relation to a publicly-owned company, means information which is of a description specified in relation to that company in an order made by the Secretary of State for the purposes of this subsection.

(9) In this section "publicly-owned company" has the meaning given by section 6.

8 Request for information

(1) In this Act any reference to a "request for information" is a reference to such a request which—

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request—

(a) is transmitted by electronic means,

(b) is received in legible form, and

(c) is capable of being used for subsequent reference.

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9 Fees

(1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

(2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

(3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State.

(4) Regulations under subsection (3) may, in particular, provide—

(a) that no fee is to be payable in prescribed cases,

(b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and

(c) that any fee is to be calculated in such manner as may be prescribed by the regulations.

(5) Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

10 Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

"the date of receipt" means—

(a) the day on which the public authority receives the request for information, or
(b) if later, the day on which it receives the information referred to in section 1(3);
"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

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11 Means by which communication to be made

(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

(2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by particular means, the public authority may have regard to all the circumstances, including the cost of doing so.

(3) Where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.

(4) Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.

12 Exemption where cost of compliance exceeds appropriate limit

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

13 Fees for disclosure where cost of compliance exceeds appropriate limit

(1) A public authority may charge for the communication of any information whose communication—

(a) is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12(1) and (2), and

(b) is not otherwise required by law,

such fee as may be determined by the public authority in accordance with regulations made by the Secretary of State.

(2) Regulations under this section may, in particular, provide—

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(a) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and

(b) that any fee is to be calculated in such manner as may be prescribed by the regulations.

(3) Subsection (1) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

14 Vexatious or repeated requests

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

15 Special provisions relating to public records transferred to Public Record Office

(1) Where—

(a) the appropriate records authority receives a request for information which relates to information which is, or if it existed would be, contained in a transferred public record, and

(b) either of the conditions in subsection (2) is satisfied in relation to any of that information,

that authority shall, within the period for complying with section 1(1), send a copy of the request to the responsible authority.

(2) The conditions referred to in subsection (1)(b) are—

(a) that the duty to confirm or deny is expressed to be excluded only by a provision of Part II not specified in subsection (3) of section 2, and

(b) that the information is exempt information only by virtue of a provision of Part II not specified in that subsection.

(3) On receiving the copy, the responsible authority shall, within such time as is reasonable in all the circumstances, inform the appropriate records authority of the determination required by virtue of subsection (3) or (4) of section 66.

(4) In this Act "transferred public record" means a public record which has been transferred—

(a) to the Public Record Office,

(b) to another place of deposit appointed by the Lord Chancellor under the [1958 c. 51.] Public Records Act 1958, or

(c) to the Public Record Office of Northern Ireland.

(5) In this Act— "appropriate records authority", in relation to a transferred public record, means—

(a) in a case falling within subsection (4)(a), the Public Record Office,

(b) in a case falling within subsection (4)(b), the Lord Chancellor, and

(c) in a case falling within subsection (4)(c), the Public Record Office of Northern Ireland;
"responsible authority", in relation to a transferred public record, means—

(a) in the case of a record transferred as mentioned in subsection (4)(a) or (b) from a government department in the charge of a Minister of the Crown, the Minister of the Crown who appears to the Lord Chancellor to be primarily concerned,
(b) in the case of a record transferred as mentioned in subsection (4)(a) or (b) from any other person, the person who appears to the Lord Chancellor to be primarily concerned,

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(c) in the case of a record transferred to the Public Record Office of Northern Ireland from a government department in the charge of a Minister of the Crown, the Minister of the Crown who appears to the appropriate Northern Ireland Minister to be primarily concerned,
(d) in the case of a record transferred to the Public Record Office of Northern Ireland from a Northern Ireland department, the Northern Ireland Minister who appears to the appropriate Northern Ireland Minister to be primarily concerned, or
(e) in the case of a record transferred to the Public Record Office of Northern Ireland from any other person, the person who appears to the appropriate Northern Ireland Minister to be primarily concerned.

16 Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

17 Refusal of request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

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(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

The Information Commissioner and the Information Tribunal

18 The Information Commissioner and the Information Tribunal

(1) The Data Protection Commissioner shall be known instead as the Information Commissioner.

(2) The Data Protection Tribunal shall be known instead as the Information Tribunal.

(3) In this Act—

(a) the Information Commissioner is referred to as "the Commissioner", and

(b) the Information Tribunal is referred to as "the Tribunal".

(4) Schedule 2 (which makes provision consequential on subsections (1) and (2) and amendments of the [1998 c. 29.] Data Protection Act 1998 relating to the extension by this Act of the functions of the Commissioner and the Tribunal) has effect.

(5) If the person who held office as Data Protection Commissioner immediately before the day on which this Act is passed remains in office as Information Commissioner at the end of the period of two years beginning with that day, he shall vacate his office at the end of that period.

(6) Subsection (5) does not prevent the re-appointment of a person whose appointment is terminated by that subsection.

(7) In the application of paragraph 2(4)(b) and (5) of Schedule 5 to the [1998 c. 29.] Data Protection Act 1998 (Commissioner not to serve for more than fifteen years and not to be appointed, except in special circumstances, for a third or subsequent term) to anything done after the passing of this Act, there shall be left out of account any term of office served by virtue of an appointment made before the passing of this Act.

Publication schemes

19 Publication schemes

(1) It shall be the duty of every public authority—

(a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a "publication scheme"),

(b) to publish information in accordance with its publication scheme, and

(c) from time to time to review its publication scheme.

(2) A publication scheme must—

(a) specify classes of information which the public authority publishes or intends to publish,

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(b) specify the manner in which information of each class is, or is intended to be, published, and

(c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.

(3) In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest—

(a) in allowing public access to information held by the authority, and

(b) in the publication of reasons for decisions made by the authority.

(4) A public authority shall publish its publication scheme in such manner as it thinks fit.

(5) The Commissioner may, when approving a scheme, provide that his approval is to expire at the end of a specified period.

(6) Where the Commissioner has approved the publication scheme of any public authority, he may at any time give notice to the public authority revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is given.

(7) Where the Commissioner—

(a) refuses to approve a proposed publication scheme, or

(b) revokes his approval of a publication scheme, he must give the public authority a statement of his reasons for doing so.

20 Model publication schemes

(1) The Commissioner may from time to time approve, in relation to public authorities falling within particular classes, model publication schemes prepared by him or by other persons.

(2) Where a public authority falling within the class to which an approved model scheme relates adopts such a scheme without modification, no further approval of the Commissioner is required so long as the model scheme remains approved; and where such an authority adopts such a scheme with modifications, the approval of the Commissioner is required only in relation to the modifications.

(3) The Commissioner may, when approving a model publication scheme, provide that his approval is to expire at the end of a specified period.

(4) Where the Commissioner has approved a model publication scheme, he may at any time publish, in such manner as he thinks fit, a notice revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is published.

(5) Where the Commissioner refuses to approve a proposed model publication scheme on the application of any person, he must give the person who applied for approval of the scheme a statement of the reasons for his refusal.

(6) Where the Commissioner refuses to approve any modifications under subsection (2), he must give the public authority a statement of the reasons for his refusal.

(7) Where the Commissioner revokes his approval of a model publication scheme, he must include in the notice under subsection (4) a statement of his reasons for doing so.

PART II EXEMPT INFORMATION

21 Information accessible to applicant by other means

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

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(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

22 Information intended for future publication

(1) Information is exempt information if—

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

23 Information supplied by or relating to bodies dealing with security matters

(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.

(3) The bodies referred to in subsections (1) and (2) are—

(a) the Security Service,

(b) the Secret Intelligence Service,

(c) the Government Communications Headquarters,

(d) the special forces,

(e) the Tribunal established under section 65 of the Regulation of [2000 c. 23.] Investigatory Powers Act 2000,

(f) the Tribunal established under section 7 of the [1985 c. 56.] Interception of Communications Act 1985,

(g) the Tribunal established under section 5 of the [1989 c. 5.] Security Service Act 1989,

(h) the Tribunal established under section 9 of the [1994 c. 13.] Intelligence Services Act 1994,

(i) the Security Vetting Appeals Panel,

(j) the Security Commission,

(k) the National Criminal Intelligence Service, and

(l) the Service Authority for the National Criminal Intelligence Service.

(4) In subsection (3)(c) "the Government Communications Headquarters" includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

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(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

24 National security

(1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

(3) A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.

(4) A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

25 Certificates under ss. 23 and 24: supplementary provisions

(1) A document purporting to be a certificate under section 23(2) or 24(3) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(2) A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under section 23(2) or 24(3) shall in any legal proceedings be evidence (or, in Scotland, sufficient evidence) of that certificate.

(3) The power conferred by section 23(2) or 24(3) on a Minister of the Crown shall not be exercisable except by a Minister who is a member of the Cabinet or by the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland.

26 Defence

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the defence of the British Islands or of any colony, or

(b) the capability, effectiveness or security of any relevant forces.

(2) In subsection (1)(b) "relevant forces" means—

(a) the armed forces of the Crown, and

(b) any forces co-operating with those forces,

or any part of any of those forces.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

27 International relations

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) relations between the United Kingdom and any other State,

(b) relations between the United Kingdom and any international organisation or international court,

(c) the interests of the United Kingdom abroad, or

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(d) the promotion or protection by the United Kingdom of its interests abroad.

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

(3) For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

(4) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)—

(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or

(b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

(5) In this section— "international court" means any international court which is not an international organisation and which is established—

(a) by a resolution of an international organisation of which the United Kingdom is a member, or
(b) by an international agreement to which the United Kingdom is a party; "international organisation" means any international organisation whose members include any two or more States, or any organ of such an organisation; "State" includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.

28 Relations within the United Kingdom

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration.

(2) In subsection (1) "administration in the United Kingdom" means—

(a) the government of the United Kingdom,

(b) the Scottish Administration,

(c) the Executive Committee of the Northern Ireland Assembly, or

(d) the National Assembly for Wales.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

29 The economy

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the economic interests of the United Kingdom or of any part of the United Kingdom, or

(b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

30 Investigations and proceedings conducted by public authorities

(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—

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(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if—

(a) it was obtained or recorded by the authority for the purposes of its functions relating to—

(i) investigations falling within subsection (1)(a) or (b),

(ii) criminal proceedings which the authority has power to conduct,

(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or

(iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

(4) In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references—

(a) to any officer of the authority,

(b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and

(c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.

(5) In this section—

"criminal proceedings" includes—

(a) proceedings before a court-martial constituted under the Army Act 1955, the [1955 c. 18.] Air[1955 c. 19.] Force Act 1955 or the [1957 c. 53.] Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,
(b) proceedings on dealing summarily with a charge under the Army Act 1955 or the [1955 c. 18.] Air[1955 c. 19.] Force Act 1955 or on summary trial under the [1957 c. 53.] Naval Discipline Act 1957,
(c) proceedings before a court established by section 83ZA of the [1955 c. 18.] Army Act 1955, section 83ZA of the [1955 c. 19.] Air Force Act 1955 or section 52FF of the [1957 c. 53.] Naval Discipline Act 1957 (summary appeal courts),
(d) proceedings before the Courts-Martial Appeal Court, and
(e) proceedings before a Standing Civilian Court; "offence" includes any offence under the [1955 c. 18.] Army Act 1955, the [1955 c. 19.] Air Force Act 1955 or the [1957 c. 53.] Naval Discipline Act 1957.
(6) In the application of this section to Scotland—

(a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",

(b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and

(c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.

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31 Law enforcement

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,

(c) the administration of justice,

(d) the assessment or collection of any tax or duty or of any imposition of a similar nature,

(e) the operation of the immigration controls,

(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or

(i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are—

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,

(e) the purpose of ascertaining the cause of an accident,

(f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,

(g) the purpose of protecting the property of charities from loss or misapplication,

(h) the purpose of recovering the property of charities,

(i) the purpose of securing the health, safety and welfare of persons at work, and

(j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

32 Court records etc

(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

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(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or

(c) any document created by—

(i) a court, or

(ii) a member of the administrative staff of a court,

for the purposes of proceedings in a particular cause or matter.

(2) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or

(b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.

(4) In this section—

(a) "court" includes any tribunal or body exercising the judicial power of the State,

(b) "proceedings in a particular cause or matter" includes any inquest or post-mortem examination,

(c) "inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment, and

(d) except in relation to Scotland, "arbitration" means any arbitration to which Part I of the [1996 c. 23.] Arbitration Act 1996 applies.

33 Audit functions

(1) This section applies to any public authority which has functions in relation to—

(a) the audit of the accounts of other public authorities, or

(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

(3) The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

34 Parliamentary privilege

(1) Information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

(2) The duty to confirm or deny does not apply if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

(3) A certificate signed by the appropriate authority certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact.

(4) In subsection (3) "the appropriate authority" means—

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(a) in relation to the House of Commons, the Speaker of that House, and

(b) in relation to the House of Lords, the Clerk of the Parliaments.

35 Formulation of government policy etc

(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to—

(a) the formulation or development of government policy,

(b) Ministerial communications,

(c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or

(d) the operation of any Ministerial private office.

(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded—

(a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or

(b) for the purposes of subsection (1)(b), as relating to Ministerial communications.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(4) In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.

(5) In this section—

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications—

(a) between Ministers of the Crown,
(b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
(c) between Assembly Secretaries, including the Assembly First Secretary, and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales; "Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary; "Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the [1998 c. 47.] Northern Ireland Act 1998.

36 Prejudice to effective conduct of public affairs

(1) This section applies to—

(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and

(b) information which is held by any other public authority.

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(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(a) would, or would be likely to, prejudice—

(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or

(ii) the work of the Executive Committee of the Northern Ireland Assembly, or

(iii) the work of the executive committee of the National Assembly for Wales,

(b) would, or would be likely to, inhibit—

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

(5) In subsections (2) and (3) "qualified person"—

(a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,

(b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,

(c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,

(d) in relation to information held by the House of Commons, means the Speaker of that House,

(e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,

(f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,

(g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,

(h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means—

(i) the public authority, or

(ii) any officer or employee of the authority authorised by the Assembly First Secretary,

(i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,

(j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,

(k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,

(l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means—

(i) the public authority, or

(ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,

(m) in relation to information held by the Greater London Authority, means the Mayor of London,

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(n) in relation to information held by a functional body within the meaning of the [1999 c. 29.] Greater London Authority Act 1999, means the chairman of that functional body, and

(o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means—

(i) a Minister of the Crown,

(ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or

(iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.

(6) Any authorisation for the purposes of this section—

(a) may relate to a specified person or to persons falling within a specified class,

(b) may be general or limited to particular classes of case, and

(c) may be granted subject to conditions.

(7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion—

(a) disclosure of information held by either House of Parliament, or

(b) compliance with section 1(1)(a) by either House,

would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

37 Communications with Her Majesty etc. and honours

(1) Information is exempt information if it relates to—

(a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or

(b) the conferring by the Crown of any honour or dignity.

(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

38 Health and safety

(1) Information is exempt information if its disclosure under this Act would, or would be likely to—

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

39 Environmental information

(1) Information is exempt information if the public authority holding it—

(a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or

(b) would be so obliged but for any exemption contained in the regulations.

(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(3) Subsection (1)(a) does not limit the generality of section 21(1).

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40 Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section— "the data protection principles" means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act; "data subject" has the same meaning as in section 1(1) of that Act; "personal data" has the same meaning as in section 1(1) of that Act.

41 Information provided in confidence

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

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42 Legal professional privilege

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

43 Commercial interests

(1) Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

44 Prohibitions on disclosure

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

PART III

GENERAL FUNCTIONS OF SECRETARY OF STATE, LORD CHANCELLOR AND INFORMATION COMMISSIONER

45 Issue of code of practice by Secretary of State

(1) The Secretary of State shall issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of the authorities' functions under Part I.

(2) The code of practice must, in particular, include provision relating to—

(a) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them,

(b) the transfer of requests by one public authority to another public authority by which the information requested is or may be held,

(c) consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information,

(d) the inclusion in contracts entered into by public authorities of terms relating to the disclosure of information, and

(e) the provision by public authorities of procedures for dealing with complaints about the handling by them of requests for information.

(3) The code may make different provision for different public authorities.

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(4) Before issuing or revising any code under this section, the Secretary of State shall consult the Commissioner.

(5) The Secretary of State shall lay before each House of Parliament any code or revised code made under this section.

46 Issue of code of practice by Lord Chancellor

(1) The Lord Chancellor shall issue, and may from time to time revise, a code of practice providing guidance to relevant authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the keeping, management and destruction of their records.

(2) For the purpose of facilitating the performance by the Public Record Office, the Public Record Office of Northern Ireland and other public authorities of their functions under this Act in relation to records which are public records for the purposes of the [1958 c. 51.] Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923, the code may also include guidance as to—

(a) the practice to be adopted in relation to the transfer of records under section 3(4) of the [1958 c. 51.] Public Records Act 1958 or section 3 of the [1923 c. 20 (N.I.)] Public Records Act (Northern Ireland) 1923, and

(b) the practice of reviewing records before they are transferred under those provisions.

(3) In exercising his functions under this section, the Lord Chancellor shall have regard to the public interest in allowing public access to information held by relevant authorities.

(4) The code may make different provision for different relevant authorities.

(5) Before issuing or revising any code under this section the Lord Chancellor shall consult—

(a) the Secretary of State,

(b) the Commissioner, and

(c) in relation to Northern Ireland, the appropriate Northern Ireland Minister.

(6) The Lord Chancellor shall lay before each House of Parliament any code or revised code made under this section.

(7) In this section "relevant authority" means—

(a) any public authority, and

(b) any office or body which is not a public authority but whose administrative and departmental records are public records for the purposes of the [1958 c. 51.] Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923.

47 General functions of Commissioner

(1) It shall be the duty of the Commissioner to promote the following of good practice by public authorities and, in particular, so to perform his functions under this Act as to promote the observance by public authorities of—

(a) the requirements of this Act, and

(b) the provisions of the codes of practice under sections 45 and 46.

(2) The Commissioner shall arrange for the dissemination in such form and manner as he considers appropriate of such information as it may appear to him expedient to give to the public—

(a) about the operation of this Act,

(b) about good practice, and

(c) about other matters within the scope of his functions under this Act,

and may give advice to any person as to any of those matters.

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(3) The Commissioner may, with the consent of any public authority, assess whether that authority is following good practice.

(4) The Commissioner may charge such sums as he may with the consent of the Secretary of State determine for any services provided by the Commissioner under this section.

(5) The Commissioner shall from time to time as he considers appropriate—

(a) consult the Keeper of Public Records about the promotion by the Commissioner of the observance by public authorities of the provisions of the code of practice under section 46 in relation to records which are public records for the purposes of the [1958 c. 51.] Public Records Act 1958, and

(b) consult the Deputy Keeper of the Records of Northern Ireland about the promotion by the Commissioner of the observance by public authorities of those provisions in relation to records which are public records for the purposes of the [1923 c. 20.] Public Records Act (Northern Ireland) 1923.

(6) In this section "good practice", in relation to a public authority, means such practice in the discharge of its functions under this Act as appears to the Commissioner to be desirable, and includes (but is not limited to) compliance with the requirements of this Act and the provisions of the codes of practice under sections 45 and 46.

48 Recommendations as to good practice

(1) If it appears to the Commissioner that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with that proposed in the codes of practice under sections 45 and 46, he may give to the authority a recommendation (in this section referred to as a "practice recommendation") specifying the steps which ought in his opinion to be taken for promoting such conformity.

(2) A practice recommendation must be given in writing and must refer to the particular provisions of the code of practice with which, in the Commissioner's opinion, the public authority's practice does not conform.

(3) Before giving to a public authority other than the Public Record Office a practice recommendation which relates to conformity with the code of practice under section 46 in respect of records which are public records for the purposes of the [1958 c. 51.] Public Records Act 1958, the Commissioner shall consult the Keeper of Public Records.

(4) Before giving to a public authority other than the Public Record Office of Northern Ireland a practice recommendation which relates to conformity with the code of practice under section 46 in respect of records which are public records for the purposes of the Public Records Act (Northern Ireland) 1923, the Commissioner shall consult the Deputy Keeper of the Records of Northern Ireland.

49 Reports to be laid before Parliament

(1) The Commissioner shall lay annually before each House of Parliament a general report on the exercise of his functions under this Act.

(2) The Commissioner may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.

PART IV

ENFORCEMENT

50 Application for decision by Commissioner

(1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.

(2) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him—

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(a) that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45,

(b) that there has been undue delay in making the application,

(c) that the application is frivolous or vexatious, or

(d) that the application has been withdrawn or abandoned.

(3) Where the Commissioner has received an application under this section, he shall either—

(a) notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so, or

(b) serve notice of his decision (in this Act referred to as a "decision notice") on the complainant and the public authority.

(4) Where the Commissioner decides that a public authority—

(a) has failed to communicate information, or to provide confirmation or denial, in a case where it is required to do so by section 1(1), or

(b) has failed to comply with any of the requirements of sections 11 and 17,

the decision notice must specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.

(5) A decision notice must contain particulars of the right of appeal conferred by section 57.

(6) Where a decision notice requires steps to be taken by the public authority within a specified period, the time specified in the notice must not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, no step which is affected by the appeal need be taken pending the determination or withdrawal of the appeal.

(7) This section has effect subject to section 53.

51 Information notices

(1) If the Commissioner—

(a) has received an application under section 50, or

(b) reasonably requires any information—

(i) for the purpose of determining whether a public authority has complied or is complying with any of the requirements of Part I, or

(ii) for the purpose of determining whether the practice of a public authority in relation to the exercise of its functions under this Act conforms with that proposed in the codes of practice under sections 45 and 46,

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

(2) An information notice must contain—

(a) in a case falling within subsection (1)(a), a statement that the Commissioner has received an application under section 50, or

(b) in a case falling within subsection (1)(b), a statement—

(i) that the Commissioner regards the specified information as relevant for either of the purposes referred to in subsection (1)(b), and

(ii) of his reasons for regarding that information as relevant for that purpose.

(3) An information notice must also contain particulars of the right of appeal conferred by section 57.

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(4) The time specified in an information notice must not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.

(5) An authority shall not be required by virtue of this section to furnish the Commissioner with any information in respect of—

(a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or

(b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.

(6) In subsection (5) references to the client of a professional legal adviser include references to any person representing such a client.

(7) The Commissioner may cancel an information notice by written notice to the authority on which it was served.

(8) In this section "information" includes unrecorded information.

52 Enforcement notices

(1) If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as "an enforcement notice") requiring the authority to take, within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.

(2) An enforcement notice must contain—

(a) a statement of the requirement or requirements of Part I with which the Commissioner is satisfied that the public authority has failed to comply and his reasons for reaching that conclusion, and

(b) particulars of the right of appeal conferred by section 57.

(3) An enforcement notice must not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(4) The Commissioner may cancel an enforcement notice by written notice to the authority on which it was served.

(5) This section has effect subject to section 53.

53 Exception from duty to comply with decision notice or enforcement notice

(1) This section applies to a decision notice or enforcement notice which—

(a) is served on—

(i) a government department,

(ii) the National Assembly for Wales, or

(iii) any public authority designated for the purposes of this section by an order made by the Secretary of State, and

(b) relates to a failure, in respect of one or more requests for information—

(i) to comply with section 1(1)(a) in respect of information which falls within any provision of Part II stating that the duty to confirm or deny does not arise, or

(ii) to comply with section 1(1)(b) in respect of exempt information.

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(2) A decision notice or enforcement notice to which this section applies shall cease to have effect if, not later than the twentieth working day following the effective date, the accountable person in relation to that authority gives the Commissioner a certificate signed by him stating that he has on reasonable grounds formed the opinion that, in respect of the request or requests concerned, there was no failure falling within subsection (1)(b).

(3) Where the accountable person gives a certificate to the Commissioner under subsection (2) he shall as soon as practicable thereafter lay a copy of the certificate before—

(a) each House of Parliament,

(b) the Northern Ireland Assembly, in any case where the certificate relates to a decision notice or enforcement notice which has been served on a Northern Ireland department or any Northern Ireland public authority, or

(c) the National Assembly for Wales, in any case where the certificate relates to a decision notice or enforcement notice which has been served on the National Assembly for Wales or any Welsh public authority.

(4) In subsection (2) "the effective date", in relation to a decision notice or enforcement notice, means—

(a) the day on which the notice was given to the public authority, or

(b) where an appeal under section 57 is brought, the day on which that appeal (or any further appeal arising out of it) is determined or withdrawn.

(5) Before making an order under subsection (1)(a)(iii), the Secretary of State shall—

(a) if the order relates to a Welsh public authority, consult the National Assembly for Wales,

(b) if the order relates to the Northern Ireland Assembly, consult the Presiding Officer of that Assembly, and

(c) if the order relates to a Northern Ireland public authority, consult the First Minister and deputy First Minister in Northern Ireland.

(6) Where the accountable person gives a certificate to the Commissioner under subsection (2) in relation to a decision notice, the accountable person shall, on doing so or as soon as reasonably practicable after doing so, inform the person who is the complainant for the purposes of section 50 of the reasons for his opinion.

(7) The accountable person is not obliged to provide information under subsection (6) if, or to the extent that, compliance with that subsection would involve the disclosure of exempt information.

(8) In this section "the accountable person"—

(a) in relation to a Northern Ireland department or any Northern Ireland public authority, means the First Minister and deputy First Minister in Northern Ireland acting jointly,

(b) in relation to the National Assembly for Wales or any Welsh public authority, means the Assembly First Secretary, and

(c) in relation to any other public authority, means—

(i) a Minister of the Crown who is a member of the Cabinet, or

(ii) the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland.

(9) In this section "working day" has the same meaning as in section 10.

54 Failure to comply with notice

(1) If a public authority has failed to comply with—

(a) so much of a decision notice as requires steps to be taken,

(b) an information notice, or

(c) an enforcement notice,

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the Commissioner may certify in writing to the court that the public authority has failed to comply with that notice.

(2) For the purposes of this section, a public authority which, in purported compliance with an information notice—

(a) makes a statement which it knows to be false in a material respect, or

(b) recklessly makes a statement which is false in a material respect,

is to be taken to have failed to comply with the notice.

(3) Where a failure to comply is certified under subsection (1), the court may inquire into the matter and, after hearing any witness who may be produced against or on behalf of the public authority, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a contempt of court.

(4) In this section "the court" means the High Court or, in Scotland, the Court of Session.

55 Powers of entry and inspection

Schedule 3 (powers of entry and inspection) has effect.

56 No action against public authority

(1) This Act does not confer any right of action in civil proceedings in respect of any failure to comply with any duty imposed by or under this Act.

(2) Subsection (1) does not affect the powers of the Commissioner under section 54.

PART V
APPEALS

57 Appeal against notices served under Part IV

(1) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice.

(2) A public authority on which an information notice or an enforcement notice has been served by the Commissioner may appeal to the Tribunal against the notice.

(3) In relation to a decision notice or enforcement notice which relates—

(a) to information to which section 66 applies, and

(b) to a matter which by virtue of subsection (3) or (4) of that section falls to be determined by the responsible authority instead of the appropriate records authority,

subsections (1) and (2) shall have effect as if the reference to the public authority were a reference to the public authority or the responsible authority.

58 Determination of appeals

(1) If on an appeal under section 57 the Tribunal considers—

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

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59 Appeals from decision of Tribunal

Any party to an appeal to the Tribunal under section 57 may appeal from the decision of the Tribunal on a point of law to the appropriate court; and that court shall be—

(a) the High Court of Justice in England if the address of the public authority is in England or Wales,

(b) the Court of Session if that address is in Scotland, and

(c) the High Court of Justice in Northern Ireland if that address is in Northern Ireland.

60 Appeals against national security certificate

(1) Where a certificate under section 23(2) or 24(3) has been issued—

(a) the Commissioner, or

(b) any applicant whose request for information is affected by the issue of the certificate,

may appeal to the Tribunal against the certificate.

(2) If on an appeal under subsection (1) relating to a certificate under section 23(2), the Tribunal finds that the information referred to in the certificate was not exempt information by virtue of section 23(1), the Tribunal may allow the appeal and quash the certificate.

(3) If on an appeal under subsection (1) relating to a certificate under section 24(3), the Tribunal finds that, applying the principles applied by the court on an application for judicial review, the Minister did not have reasonable grounds for issuing the certificate, the Tribunal may allow the appeal and quash the certificate.

(4) Where in any proceedings under this Act it is claimed by a public authority that a certificate under section 24(3) which identifies the information to which it applies by means of a general description applies to particular information, any other party to the proceedings may appeal to the Tribunal on the ground that the certificate does not apply to the information in question and, subject to any determination under subsection (5), the certificate shall be conclusively presumed so to apply.

(5) On any appeal under subsection (4), the Tribunal may determine that the certificate does not so apply.

61 Appeal proceedings

(1) Schedule 4 (which contains amendments of Schedule 6 to the [1998 c. 29.] Data Protection Act 1998 relating to appeal proceedings) has effect.

(2) Accordingly, the provisions of Schedule 6 to the [1998 c. 29.] Data Protection Act 1998 have effect (so far as applicable) in relation to appeals under this Part.

PART VI
HISTORICAL RECORDS AND RECORDS IN PUBLIC RECORD OFFICE OR PUBLIC RECORD OFFICE OF NORTHERN IRELAND

62 Interpretation of Part VI

(1) For the purposes of this Part, a record becomes a "historical record" at the end of the period of thirty years beginning with the year following that in which it was created.

(2) Where records created at different dates are for administrative purposes kept together in one file or other assembly, all the records in that file or other assembly are to be treated for the purposes of this Part as having been created when the latest of those records was created.

(3) In this Part "year" means a calendar year.

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63 Removal of exemptions: historical records generally

(1) Information contained in a historical record cannot be exempt information by virtue of section 28, 30(1), 32, 33, 35, 36, 37(1)(a), 42 or 43.

(2) Compliance with section 1(1)(a) in relation to a historical record is not to be taken to be capable of having any of the effects referred to in section 28(3), 33(3), 36(3), 42(2) or 43(3).

(3) Information cannot be exempt information by virtue of section 37(1)(b) after the end of the period of sixty years beginning with the year following that in which the record containing the information was created.

(4) Information cannot be exempt information by virtue of section 31 after the end of the period of one hundred years beginning with the year following that in which the record containing the information was created.

(5) Compliance with section 1(1)(a) in relation to any record is not to be taken, at any time after the end of the period of one hundred years beginning with the year following that in which the record was created, to be capable of prejudicing any of the matters referred to in section 31(1).

64 Removal of exemptions: historical records in public record offices

(1) Information contained in a historical record in the Public Record Office or the Public Record Office of Northern Ireland cannot be exempt information by virtue of section 21 or 22.

(2) In relation to any information falling within section 23(1) which is contained in a historical record in the Public Record Office or the Public Record Office of Northern Ireland, section 2(3) shall have effect with the omission of the reference to section 23.

65 Decisions as to refusal of discretionary disclosure of historical records

(1) Before refusing a request for information relating to information which is contained in a historical record and is exempt information only by virtue of a provision not specified in section 2(3), a public authority shall—

(a) if the historical record is a public record within the meaning of the [1958 c. 51.] Public Records Act 1958, consult the Lord Chancellor, or

(b) if the historical record is a public record to which the [1923 c. 20 (N.I.).] Public Records Act (Northern Ireland) 1923 applies, consult the appropriate Northern Ireland Minister.

(2) This section does not apply to information to which section 66 applies.

66 Decisions relating to certain transferred public records

(1) This section applies to any information which is (or, if it existed, would be) contained in a transferred public record, other than information which the responsible authority has designated as open information for the purposes of this section.

(2) Before determining whether—

(a) information to which this section applies falls within any provision of Part II relating to the duty to confirm or deny, or

(b) information to which this section applies is exempt information,

the appropriate records authority shall consult the responsible authority.

(3) Where information to which this section applies falls within a provision of Part II relating to the duty to confirm or deny but does not fall within any of the provisions of that Part relating to that duty which are specified in subsection (3) of section 2, any question as to the application of subsection (1)(b) of that section is to be determined by the responsible authority instead of the appropriate records authority.

(4) Where any information to which this section applies is exempt information only by virtue of any provision of Part II not specified in subsection (3) of section 2, any question as to the application of

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subsection (2)(b) of that section is to be determined by the responsible authority instead of the appropriate records authority.

(5) Before making by virtue of subsection (3) or (4) any determination that subsection (1)(b) or (2)(b) of section 2 applies, the responsible authority shall consult—

(a) where the transferred public record is a public record within the meaning of the [1958 c. 51.] Public Records Act 1958, the Lord Chancellor, and

(b) where the transferred public record is a public record to which the [1923 c. 20 (N.I.).] Public Records Act (Northern Ireland) 1923 applies, the appropriate Northern Ireland Minister.

(6) Where the responsible authority in relation to information to which this section applies is not (apart from this subsection) a public authority, it shall be treated as being a public authority for the purposes of Parts III, IV and V of this Act so far as relating to—

(a) the duty imposed by section 15(3), and

(b) the imposition of any requirement to furnish information relating to compliance with Part I in connection with the information to which this section applies.

67 Amendments of public records legislation

Schedule 5 (which amends the [1958 c. 51.] Public Records Act 1958 and the Public Records Act (Northern Ireland) 1923) has effect.

AMENDMENTS OF DATA PROTECTION ACT 1998

Amendments relating to personal information held by public authorities

68 Extension of meaning of "data"

(1) Section 1 of the [1998 c. 29.] Data Protection Act 1998 (basic interpretative provisions) is amended in accordance with subsections (2) and (3).

(2) In subsection (1)—

(a) in the definition of "data", the word "or" at the end of paragraph (c) is omitted and after paragraph (d) there is inserted "or

(e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d);", and

(b) after the definition of "processing" there is inserted—

""public authority" has the same meaning as in the Freedom of Information Act 2000;".

(3) After subsection (4) there is inserted—

"(5) In paragraph (e) of the definition of "data" in subsection (1), the reference to information "held" by a public authority shall be construed in accordance with section 3(2) of the Freedom of Information Act 2000.

(6) Where section 7 of the Freedom of Information Act 2000 prevents Parts I to V of that Act from applying to certain information held by a public authority, that information is not to be treated for the purposes of paragraph (e) of the definition of "data" in subsection (1) as held by a public authority."

(4) In section 56 of that Act (prohibition of requirement as to production of certain records), after subsection (6) there is inserted—

"(6A) A record is not a relevant record to the extent that it relates, or is to relate, only to personal data falling within paragraph (e) of the definition of "data" in section 1(1)."

(5) In the Table in section 71 of that Act (index of defined expressions) after the entry relating to processing there is inserted—

"public authority section 1(1).".

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69 Right of access to unstructured personal data held by public authorities

(1) In section 7(1) of the [1998 c. 29.] Data Protection Act 1998 (right of access to personal data), for "sections 8 and 9" there is substituted "sections 8, 9 and 9A".

(2) After section 9 of that Act there is inserted—

"9A Unstructured personal data held by public authorities

(1) In this section "unstructured personal data" means any personal data falling within paragraph (e) of the definition of "data" in section 1(1), other than information which is recorded as part of, or with the intention that it should form part of, any set of information relating to individuals to the extent that the set is structured by reference to individuals or by reference to criteria relating to individuals.

(2) A public authority is not obliged to comply with subsection (1) of section 7 in relation to any unstructured personal data unless the request under that section contains a description of the data.

(3) Even if the data are described by the data subject in his request, a public authority is not obliged to comply with subsection (1) of section 7 in relation to unstructured personal data if the authority estimates that the cost of complying with the request so far as relating to those data would exceed the appropriate limit.

(4) Subsection (3) does not exempt the public authority from its obligation to comply with paragraph (a) of section 7(1) in relation to the unstructured personal data unless the estimated cost of complying with that paragraph alone in relation to those data would exceed the appropriate limit.

(5) In subsections (3) and (4) "the appropriate limit" means such amount as may be prescribed by the Secretary of State by regulations, and different amounts may be prescribed in relation to different cases.

(6) Any estimate for the purposes of this section must be made in accordance with regulations under section 12(5) of the Freedom of Information Act 2000."

(3) In section 67(5) of that Act (statutory instruments subject to negative resolution procedure), in paragraph (c), for "or 9(3)" there is substituted ", 9(3) or 9A(5)".

70 Exemptions applicable to certain manual data held by public authorities

(1) After section 33 of the [1998 c. 29.] Data Protection Act 1998 there is inserted—

"33A Manual data held by public authorities

(1) Personal data falling within paragraph (e) of the definition of "data" in section 1(1) are exempt from—

(a) the first, second, third, fifth, seventh and eighth data protection principles,

(b) the sixth data protection principle except so far as it relates to the rights conferred on data subjects by sections 7 and 14,

(c) sections 10 to 12,

(d) section 13, except so far as it relates to damage caused by a contravention of section 7 or of the fourth data protection principle and to any distress which is also suffered by reason of that contravention,

(e) Part III, and

(f) section 55.

(2) Personal data which fall within paragraph (e) of the definition of "data" in section 1(1) and relate to appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to—

(a) service in any of the armed forces of the Crown,

(b) service in any office or employment under the Crown or under any public authority, or

(c) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action taken, in such matters is vested in Her Majesty, any Minister of the Crown, the National Assembly for Wales, any Northern Ireland Minister (within the meaning of the Freedom of Information Act 2000) or any public authority,

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are also exempt from the remaining data protection principles and the remaining provisions of Part II."

(2) In section 55 of that Act (unlawful obtaining etc. of personal data) in subsection (8) after "section 28" there is inserted "or 33A".

(3) In Part III of Schedule 8 to that Act (exemptions available after 23rd October 2001 but before 24th October 2007) after paragraph 14 there is inserted—

"14A (1) This paragraph applies to personal data which fall within paragraph (e) of the definition of "data" in section 1(1) and do not fall within paragraph 14(1)(a), but does not apply to eligible manual data to which the exemption in paragraph 16 applies.

(2) During the second transitional period, data to which this paragraph applies are exempt from—

(a) the fourth data protection principle, and

(b) section 14(1) to (3)."

(4) In Schedule 13 to that Act (modifications of Act having effect before 24th October 2007) in subsection (4)(b) of section 12A to that Act as set out in paragraph 1, after "paragraph 14" there is inserted "or 14A".

71 Particulars registrable under Part III of Data Protection Act 1998

In section 16(1) of the [1998 c. 29.] Data Protection Act 1998 (the registrable particulars), before the word "and" at the end of paragraph (f) there is inserted—

"(ff) where the data controller is a public authority, a statement of that fact,".

72 Availability under Act disregarded for purpose of exemption

In section 34 of the [1998 c. 29.] Data Protection Act 1998 (information available to the public by or under enactment), after the word "enactment" there is inserted "other than an enactment contained in the Freedom of Information Act 2000".

Other amendments

73 Further amendments of Data Protection Act 1998

Schedule 6 (which contains further amendments of the Data Protection Act 1998) has effect.

PART VIII

MISCELLANEOUS AND SUPPLEMENTAL

74 Power to make provision relating to environmental information

(1) In this section "the Aarhus Convention" means the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters signed at Aarhus on 25th June 1998.

(2) For the purposes of this section "the information provisions" of the Aarhus Convention are Article 4, together with Articles 3 and 9 so far as relating to that Article.

(3) The Secretary of State may by regulations make such provision as he considers appropriate—

(a) for the purpose of implementing the information provisions of the Aarhus Convention or any amendment of those provisions made in accordance with Article 14 of the Convention, and

(b) for the purpose of dealing with matters arising out of or related to the implementation of those provisions or of any such amendment.

(4) Regulations under subsection (3) may in particular—

(a) enable charges to be made for making information available in accordance with the regulations,

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(b) provide that any obligation imposed by the regulations in relation to the disclosure of information is to have effect notwithstanding any enactment or rule of law,

(c) make provision for the issue by the Secretary of State of a code of practice,

(d) provide for sections 47 and 48 to apply in relation to such a code with such modifications as may be specified,

(e) provide for any of the provisions of Parts IV and V to apply, with such modifications as may be specified in the regulations, in relation to compliance with any requirement of the regulations, and

(f) contain such transitional or consequential provision (including provision modifying any enactment) as the Secretary of State considers appropriate.

(5) This section has effect subject to section 80.

75 Power to amend or repeal enactments prohibiting disclosure of information

(1) If, with respect to any enactment which prohibits the disclosure of information held by a public authority, it appears to the Secretary of State that by virtue of section 44(1)(a) the enactment is capable of preventing the disclosure of information under section 1, he may by order repeal or amend the enactment for the purpose of removing or relaxing the prohibition.

(2) In subsection (1)— "enactment" means—

(a) any enactment contained in an Act passed before or in the same Session as this Act, or
(b) any enactment contained in Northern Ireland legislation or subordinate legislation passed or made before the passing of this Act; "information" includes unrecorded information.
(3) An order under this section may do all or any of the following—

(a) make such modifications of enactments as, in the opinion of the Secretary of State, are consequential upon, or incidental to, the amendment or repeal of the enactment containing the prohibition;

(b) contain such transitional provisions and savings as appear to the Secretary of State to be appropriate;

(c) make different provision for different cases.

76 Disclosure of information between Commissioner and ombudsmen

(1) The Commissioner may disclose to a person specified in the first column of the Table below any information obtained by, or furnished to, the Commissioner under or for the purposes of this Act or the [1998 c. 29.] Data Protection Act 1998 if it appears to the Commissioner that the information relates to a matter which could be the subject of an investigation by that person under the enactment specified in relation to that person in the second column of that Table.

TABLE

Ombudsman	*Enactment*
The Parliamentary Commissioner for Administration.	The Parliamentary Commissioner Act 1967 (c. 13).
The Health Service Commissioner for England.	The Health Service Commissioners Act 1993 (c. 46).
The Health Service Commissioner for Wales.	The Health Service Commissioners Act 1993 (c. 46).
The Health Service Commissioner for Scotland.	The Health Service Commissioners Act 1993 (c. 46).
A Local Commissioner as defined by section 23(3) of the Local Government Act 1974.	Part III of the Local Government Act 1974 (c. 7).
The Commissioner for Local Administration in Scotland.	Part II of the Local Government (Scotland) Act 1975 (c. 30).

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Ombudsman	*Enactment*
The Scottish Parliamentary Commissioner for Administration.	The Scotland Act 1998 (Transitory and Transitional Provisions)(Complaints of Maladministration) Order 1999 (S.I. 1999/1351).
The Welsh Administration Ombudsman.	Schedule 9 to the Government of Wales Act 1998 (c. 38).
The Northern Ireland Commissioner for Complaints.	The Commissioner for Complaints (Northern Ireland) Order 1996 (S.I. 1996/1297 (N.I. 7)).
The Assembly Ombudsman for Northern Ireland.	The Ombudsman (Northern Ireland) Order 1996 (S.I. 1996/1298 (N.I. 8)).

(2) Schedule 7 (which contains amendments relating to information disclosed to ombudsmen under subsection (1) and to the disclosure of information by ombudsmen to the Commissioner) has effect.

77 Offence of altering etc. records with intent to prevent disclosure

(1) Where—

(a) a request for information has been made to a public authority, and

(b) under section 1 of this Act or section 7 of the [1988 c. 29.] Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

(2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) No proceedings for an offence under this section shall be instituted—

(a) in England or Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

78 Saving for existing powers

Nothing in this Act is to be taken to limit the powers of a public authority to disclose information held by it.

79 Defamation

Where any information communicated by a public authority to a person ("the applicant") under section 1 was supplied to the public authority by a third person, the publication to the applicant of any defamatory matter contained in the information shall be privileged unless the publication is shown to have been made with malice.

80 Scotland

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(1) No order may be made under section 4(1) or 5 in relation to any of the bodies specified in subsection (2); and the power conferred by section 74(3) does not include power to make provision in relation to information held by any of those bodies.

(2) The bodies referred to in subsection (1) are—

(a) the Scottish Parliament,

(b) any part of the Scottish Administration,

(c) the Scottish Parliamentary Corporate Body, or

(d) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the [1998 c. 46.] Scotland Act 1998).

81 Application to government departments etc

(1) For the purposes of this Act each government department is to be treated as a person separate from any other government department.

(2) Subsection (1) does not enable—

(a) a government department which is not a Northern Ireland department to claim for the purposes of section 41(1)(b) that the disclosure of any information by it would constitute a breach of confidence actionable by any other government department (not being a Northern Ireland department), or

(b) a Northern Ireland department to claim for those purposes that the disclosure of information by it would constitute a breach of confidence actionable by any other Northern Ireland department.

(3) A government department is not liable to prosecution under this Act, but section 77 and paragraph 12 of Schedule 3 apply to a person in the public service of the Crown as they apply to any other person.

(4) The provisions specified in subsection (3) also apply to a person acting on behalf of either House of Parliament or on behalf of the Northern Ireland Assembly as they apply to any other person.

82 Orders and regulations

(1) Any power of the Secretary of State to make an order or regulations under this Act shall be exercisable by statutory instrument.

(2) A statutory instrument containing (whether alone or with other provisions)—

(a) an order under section 5, 7(3) or (8), 53(1)(a)(iii) or 75, or

(b) regulations under section 10(4) or 74(3),

shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(3) A statutory instrument which contains (whether alone or with other provisions)—

(a) an order under section 4(1), or

(b) regulations under any provision of this Act not specified in subsection (2)(b),

and which is not subject to the requirement in subsection (2) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) An order under section 4(5) shall be laid before Parliament after being made.

(5) If a draft of an order under section 5 or 7(8) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

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83 Meaning of "Welsh public authority"

(1) In this Act "Welsh public authority" means—

(a) any public authority which is listed in Part II, III, IV or VI of Schedule 1 and whose functions are exercisable only or mainly in or as regards Wales, other than an excluded authority, or

(b) any public authority which is an Assembly subsidiary as defined by section 99(4) of the [1998 c. 38.] Government of Wales Act 1998.

(2) In paragraph (a) of subsection (1) "excluded authority" means a public authority which is designated by the Secretary of State by order as an excluded authority for the purposes of that paragraph.

(3) Before making an order under subsection (2), the Secretary of State shall consult the National Assembly for Wales.

84 Interpretation

In this Act, unless the context otherwise requires—

"applicant", in relation to a request for information, means the person who made the request; "appropriate Northern Ireland Minister" means the Northern Ireland Minister in charge of the Department of Culture, Arts and Leisure in Northern Ireland; "appropriate records authority", in relation to a transferred public record, has the meaning given by section 15(5); "body" includes an unincorporated association; "the Commissioner" means the Information Commissioner; "decision notice" has the meaning given by section 50; "the duty to confirm or deny" has the meaning given by section 1(6); "enactment" includes an enactment contained in Northern Ireland legislation; "enforcement notice" has the meaning given by section 52; "executive committee", in relation to the National Assembly for Wales, has the same meaning as in the [1998 c. 38.] Government of Wales Act 1998;"exempt information" means information which is exempt information by virtue of any provision of Part II; "fees notice" has the meaning given by section 9(1); "government department" includes a Northern Ireland department, the Northern Ireland Court Service and any other body or authority exercising statutory functions on behalf of the Crown, but does not include—

(a) any of the bodies specified in section 80(2),
(b) the Security Service, the Secret Intelligence Service or the Government Communications Headquarters, or
(c) the National Assembly for Wales; "information" (subject to sections 51(8) and 75(2)) means information recorded in any form; "information notice" has the meaning given by section 51; "Minister of the Crown" has the same meaning as in the Ministers of the [1975 c. 26.] Crown Act 1975; "Northern Ireland Minister" includes the First Minister and deputy First Minister in Northern Ireland; "Northern Ireland public authority" means any public authority, other than the Northern Ireland Assembly or a Northern Ireland department, whose functions are exercisable only or mainly in or as regards Northern Ireland and relate only or mainly to transferred matters; "prescribed" means prescribed by regulations made by the Secretary of State; "public authority" has the meaning given by section 3(1); "public record" means a public record within the meaning of the [1958 c. 51.] Public Records Act 1958 or a public record to which the [1923 c. 20 (N.I.).] Public Records Act (Northern Ireland) 1923 applies; "publication scheme" has the meaning given by section 19; "request for information" has the meaning given by section 8; "responsible authority", in relation to a transferred public record, has the meaning given by section 15(5); "the special forces" means those units of the armed forces of the Crown the maintenance of whose capabilities is the responsibility of the Director of Special Forces or which are for the time being subject to the operational command of that Director; "subordinate legislation" has the meaning given by subsection (1) of section 21 of the [1978 c. 30.] Interpretation Act 1978, except that the definition of that term in that subsection shall have effect as if "Act" included Northern Ireland legislation; "transferred matter", in relation to Northern Ireland, has the meaning given by section 4(1) of the [1998 c. 47.] Northern Ireland Act 1998; "transferred public record" has the meaning given by section 15(4); "the Tribunal" means the Information Tribunal; "Welsh public authority" has the meaning given by section 83.

85 Expenses

There shall be paid out of money provided by Parliament—

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(a) any increase attributable to this Act in the expenses of the Secretary of State in respect of the Commissioner, the Tribunal or the members of the Tribunal,

(b) any administrative expenses of the Secretary of State attributable to this Act,

(c) any other expenses incurred in consequence of this Act by a Minister of the Crown or government department or by either House of Parliament, and

(d) any increase attributable to this Act in the sums which under any other Act are payable out of money so provided.

86 Repeals

Schedule 8 (repeals) has effect.

87 Commencement

(1) The following provisions of this Act shall come into force on the day on which this Act is passed—

(a) sections 3 to 8 and Schedule 1,

(b) section 19 so far as relating to the approval of publication schemes,

(c) section 20 so far as relating to the approval and preparation by the Commissioner of model publication schemes,

(d) section 47(2) to (6),

(e) section 49,

(f) section 74,

(g) section 75,

(h) sections 78 to 85 and this section,

(i) paragraphs 2 and 17 to 22 of Schedule 2 (and section 18(4) so far as relating to those paragraphs),

(j) paragraph 4 of Schedule 5 (and section 67 so far as relating to that paragraph),

(k) paragraph 8 of Schedule 6 (and section 73 so far as relating to that paragraph),

(l) Part I of Schedule 8 (and section 86 so far as relating to that Part), and

(m) so much of any other provision of this Act as confers power to make any order, regulations or code of practice.

(2) The following provisions of this Act shall come into force at the end of the period of two months beginning with the day on which this Act is passed—

(a) section 18(1),

(b) section 76 and Schedule 7,

(c) paragraphs 1(1), 3(1), 4, 6, 7, 8(2), 9(2), 10(a), 13(1) and (2), 14(a) and 15(1) and (2) of Schedule 2 (and section 18(4) so far as relating to those provisions), and

(d) Part II of Schedule 8 (and section 86 so far as relating to that Part).

(3) Except as provided by subsections (1) and (2), this Act shall come into force at the end of the period of five years beginning with the day on which this Act is passed or on such day before the end of that period as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

(4) An order under subsection (3) may contain such transitional provisions and savings (including provisions capable of having effect after the end of the period referred to in that subsection) as the Secretary of State considers appropriate.

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(5) During the twelve months beginning with the day on which this Act is passed, and during each subsequent complete period of twelve months in the period beginning with that day and ending with the first day on which all the provisions of this Act are fully in force, the Secretary of State shall—

(a) prepare a report on his proposals for bringing fully into force those provisions of this Act which are not yet fully in force, and

(b) lay a copy of the report before each House of Parliament.

88 Short title and extent

(1) This Act may be cited as the Freedom of Information Act 2000.

(2) Subject to subsection (3), this Act extends to Northern Ireland.

(3) The amendment or repeal of any enactment by this Act has the same extent as that enactment

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